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Decisions and Opinions

OF THE

Railroad and Warehouse Commission

OF THE

STATE OF ILLINOIS

VOLUME III.

Being a compilation of Volumes I and II and all Decisions
since the date of Volume II.

From 1889 to August 1st, 1912

Compiled by

LEONARD F. MARTIN

Under the Supervision of the Commission.

Commissioners

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SPRINGFIELD, ILL.
ILLINOIS STATE JOURNAL CO., STATE PRINTERS
1912

385.732

Ill. Hist. Surv.

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INTRODUCTION.

The purpose in compiling this book is well explained by the following quotation from the case of *Minneapolis, St. P. & S. Ste. M. R. Co. v. Railroad Com.*, 136 Wis., 146 (1908), in which Timlin, J., said: "The exact legal relation of the railroad to the state and its citizens presents many grave and difficult legal problems. It was unknown to the ancient jurists. Restrictions of written constitutions and of our dual system of federal and state control of commerce, the vastness of the interests affected, the multitude of detail, and the many-sided legal and economic nature of the questions ordinarily presented, are responsible for much of this difficulty; the extraordinary development of the carrying trade in modern times for more. Consequently the law on this subject, statute and unwritten, is more or less in a state of transition at the present time." And continuing later in the decision said: "The notion that commissions of this kind should be closely restricted by the courts is not conducive to the best results. Justice dwells with us as with the fathers; it is not exclusively the attribute of any office or class; it depends more readily to confidence than to criticism; and there is no reason why the members of the great railroad commission of this state should not develop and establish a system of rules and precedents as wise and beneficent within their sphere of action as those established by the early common-law judges."

Illinois Historical Survey 1905-6
91-94

INTRODUCTION

NOTE.

This book does not contain all the decisions of the commission during the period it purports to cover, but only those cases in which some rule has been laid down, or some statute or law discussed, or in which the commission has "done something" which may serve us a precedent as explained in the introduction and aid in the intelligent consideration of similar questions as they arise in the future.

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CONNECTIONS.

THE SHIRLEY FARMERS' GRAIN & COAL CO.,

v.

THE CHICAGO AND ALTON RY. CO.

Appearances—Bracken & Ewing for the petitioner, William Brown for defendant, and Judge Thomas F. Tipton appeared for J. L. Douglas opposing the order for permission to connect.

Petition for track connection at Shirley, Ill. Petition was filed in the above entitled case before this commission, June 11, 1903, and site viewed on June 15, 1903.

Demurrer was filed to the petition on that day, alleging that the petition was prematurely filed for the reason that there was no elevator then in existence. Demurrer was sustained on the above ground.

Petition filed Sept. 4, 1903, asking leave to file amended petition. Leave granted and amended petition filed that day. Case set for hearing Sept. 12, 1903, at the office of the Railroad and Warehouse Commission in Springfield, Ill.

On the trial the evidence showed clearly that the petitioner had constructed an elevator adjoining the right of way of the Chicago & Alton Railway Company's track at Shirley, Ill., within 50 feet of the main track of said railway company. That there was no other railroad in that vicinity with which they could connect a side track for the purpose of receiving and delivering grain and coal.

The evidence showed further that their elevator was now completed and ready to do business and that when the track was connected with the track of the said Chicago & Alton Ry. Co., they could receive and ship grain and coal, the grain that would be stored in their elevator, and the coal for sale at their elevator and in their coal houses.

The defense was that their elevator was not a public elevator within the meaning of the statutes and for that reason they were not entitled to a connection with the said railway company.

The statute is as follows; Section 134:

"That public warehouses as defined in article 13 of the Constitution of this State shall be divided into three classes, to be designated as classes A, B and C, respectively."

Section 135: "Public warehouses of class A shall embrace all warehouses, elevators and granaries in which grain is stored in bulk and in which the grain of different owners is mixed together, or in which grain is stored in such manner that the identity of different lots or parcels cannot be accurately preserved, such warehouses, elevators or granaries being located in cities having not less than 100,000 inhabitants. Public warehouses of class B shall embrace all other warehouses, elevators or granaries in which grain is stored in bulk and in which the grain of different owners is mixed together. Public warehouses of class C shall embrace all other warehouses or places where property of any kind is stored for a consideration."

It seems from the reading of these statutes that there can be no question that the above mentioned warehouse or elevator is a public warehouse. The evidence showing conclusively that it is built for the purpose of receiving, storing and shipping grain, coal and other materials generally used in that kind of business, from said elevator at Shirley, Ill.

The statute, section 120, is as follows:

"Every railroad corporation which shall receive any grain in bulk for transportation to any place within the State, shall transport and deliver the same to any consignee, elevator, warehouse or place to whom or to which it may be consigned or directed: *Provided*, such person, warehouse or place can be reached by any track owned, leased or used, or which can be used by such corporation; and every corporation shall permit connections to be made and maintained with its track to and from any and all public warehouses where grain is or may be stored. Any such corporation neglecting or refusing to comply with the requirements of this section, shall be liable to all persons injured thereby for all damages which they may sustain on that account, whether such damages result from any depreciation in the value of such property, by such neglect or refusal to deliver such grain as directed, or in loss to the proprietor or manager of any public warehouse to which it is directed to be delivered and cost of suit, including such reasonable attorney's fees as shall be taxed by the court. And in case of any second or later refusal of such railroad corporation to comply with the requirements of this section, such corporation shall be by the court, in the action on which such failure or refusal shall be found, adjudged to pay for the use of the People of this State, a sum not less than \$1,000.00 nor more than \$5,000.00 for each and every failure or refusal, and this may be a part of the judgment of the court in any second or later proceeding against such corporation. In case any railroad corporation shall be found guilty of having violated, failed or omitted to observe and comply with the requirements of this section or any part thereof, three or more times, it shall be lawful for any person interested to apply to a court of chancery and obtain the appointment of a receiver to take charge of and manage such railroad corporation until all damages, penalties, costs and expenses adjudged against such corporation for any and every violation shall, together with interest be fully satisfied."

It would seem from the statutes that the petitioners, who are a corporation and doing business as an elevator company—buying, receiving, storing and selling and shipping grain and coal, are entitled under the above section to be permitted to connect and maintain a connection with the track of the Chicago & Alton Ry. Co., at or near its said elevator at Shirley, Ill.

It is therefore ordered by the commission that the Shirley Farmers' Grain & Coal Company be permitted to make connections with the track of the Chicago & Alton Ry. Co. at a convenient point near their elevator at Shirley, Ill., for the purpose of receiving and shipping grain and coal and other materials, as provided by the statutes and Constitution of the State of Illinois; and that in making said connection, that they shall do the same in a way that will not necessarily interfere with the tracks and traffic of said Chicago & Alton Ry. Co. That they shall give reasonable notice to the said Chicago & Alton Ry. Co. of their intention so to do.

It is further ordered by the said Railroad and Warehouse Commission that if the said Chicago & Alton Ry. Co. desire to make an extension of their side track at Shirley, the south end of which is about 1,000 feet north of the above company's elevator, that they shall have the right to do so, and that the Shirley Farmers' Grain & Coal Company shall pay for said connection, a reasonable cost of constructing and connection and switch of the proper length to enable them to do their business properly at their said elevator.

J. S. NEVILLE, *Chairman*;
A. L. FRENCH, *Commissioner*.

Springfield, Ill., Sept. 22, 1903.

IN THE MATTER OF THE PETITION OF THE ST. LOUIS AND ST. LIBORY
RAILWAY

V.

ILLINOIS CENTRAL RAILROAD COMPANY.

The petition in this case asks permission to connect with the tracks of the Illinois Central Railroad, known as the St. Louis Division of said road, at a point in New Athens township, in said St. Clair county, Ill., situated about two miles south of the village of Freeburg, by grade connection, which is fully described and shown in the plat attached to the petition.

The prayer of the petition is that this commission shall enter an order prescribing the manner of such connection and directing and authorizing such connection with such railroad. Paragraph 6 of section 20 of chapter 114, Revised Statutes, provides as follows:

"To cross, intersect, join and unite its railways with any other railway before constructed, at any point in its route, and upon the grounds of

such other railway company, with the necessary turnouts, sidings and switches, and other conveniences, in furtherance of the objects of its connections; and every corporation whose railway is or shall be hereafter intersected by any new railway, shall unite with the corporation owning such new railway in forming such intersections and connections, and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined in manner prescribed by law."

Under the statute and in view of the general policy in relation to this subject, there can be no doubt of the existence of the power of the petitioner to make and compel the connection mentioned in its petition, but the procedure is not so easily determined. The latter clause of paragraph 6 is as follows:

"And if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined in manner prescribed by law."

In order to make such connection, petitioner must necessarily use a portion of the right of way of the Illinois Central Railroad. In the case of the Suburban R. R. Co. v. Metropolitan West Side Elevated R. R. Co., in 193 Ill., page 224, the court, in passing upon a similar question, says:

"The right to form such a connection may be obtained by procedure under the Eminent Domain Act."

It seems that the only question before us is the question of the proper remedy of the manner in which the petitioner shall proceed in the exercise of the power granted in the statute. In the case of the East St. Louis and Carondelet Ry. v. Belleville City Ry. Co., in 159 Ill., at page 549:

"In view of section 13 of article 2 of the Constitution of 1870, which provides that compensation for property taken or damaged for public use, when not made by the State, 'shall be ascertained by a jury, as shall be prescribed by law.'"

It seems to us from a very careful examination of the authorities that where the two corporations cannot agree as to the connection or the right-of-way to approach the land necessary to such connection, that such compensation must be ascertained under the law of Eminent Domain, and that for the purpose of condemnation this commission have no power, and that when the petitioner herein has exercised its power under the statute and condemned the necessary right-of-way for the purpose of such connection, that its right to connect is given by the statute above referred to.

The prayer of the petition, therefore, will have to be denied, and the petition dismissed for want of jurisdiction to make an order in relation thereto. Petition dismissed.

By order of the commission this 29th day of March, 1911.

O. F. BERRY, *Chairman.*

RAILROAD AND WAREHOUSE COMMISSION
ON RELATION OF
A. AND J. VAN DER WAGEN, CHICAGO, ILL.

V.

BELT RAILWAY CO. OF CHICAGO.

Complaint—Refusal to make or permit track connection at 63d st., Chicago, Ill., filed Oct. 27, 1911.

Appearances—For the complainant, E. L. Van Dellen, Attorney, Chicago; for the defendant, C. G. Austin, Attorney.

Case heard Dec. 7, 1911.

Findings of commission entered Dec. 14, 1911, as follows:

The complaint in this case sets forth the fact that the complainants have made application for a switch connection with the defendant road at or near 63d st., in the city of Chicago, county of Cook and State of Illinois, which switch and connection complainants desire to use from and to a coal yard they wish to establish on their property.

The answer of the defendant denies the jurisdiction of the commission in this case; it also denies the power of the commission to make the connection because the same is not asked for at any regular station along the line of the defendant's road, neither of which objections the commission believes to be well taken. Article 13, section 5, of the Constitution provides: "And all railroad companies shall permit connections to be made with their track, so that any such consignee, and any public warehouse, coal bank or coal yard, may be reached by the cars on said railroad."

The defendant road evidently had in mind, in filing its answer, only the section of the statute in relation to side track connections, which would not be applicable in this case if the complaint was sufficient, and the evidence sustained it, for the reason that the application in this case is covered by the section of the Constitution above quoted, together with section 30 of the Act of 1911, which clearly gives the commission both power and jurisdiction where the facts would justify.

The complaint in this case states that complainant desires an order of this commission compelling a connection with the defendant road, "so that the coal yard they wish to establish on their property may be reached by cars on the defendant's railroad." Without at this time determining what would be the holding of the commission if the complaint stated that the complainant had established and was using and operating a coal yard at the point named and desired this connection, it is sufficient to say that in the opinion of the commission, under the complaint and the evidence in this case, the commission would not be justified in directing a physical connection at this point. The commission holds that it would be going beyond the intention both of the constitution and the statute as well, to

hold that a connection might be made in advance, alleging that the complainant expected to sometime in the future establish a coal yard. The intention of the Constitution and the statute as well, was that, when a coal bank or coal yard was established and ready for operation or would be in the near future, that any railroad company should permit a connection to be made for the purpose of receiving and sending away cars and coal from such bank or yard.

In the opinion of the commission, the facts charged in the complaint are not sufficient to justify an order directing a connection at this point at this time, therefore the complaint will be dismissed.

By order of the commission this 14th day of December, 1911, dated at Springfield, Ill.

O. F. BERRY, *Chairman.*

RAILROAD AND WAREHOUSE COMMISSION

ON RELATION OF

J. L. FRESE, QUINCY, ILL.

V.

CHICAGO, BURLINGTON & QUINCY RAILROAD CO.

Application for switch track at Quincy, Ill., filed Oct. 20, 1911.

Appearances—For the complainant, J. T. Gilmer, Attorney, Quincy, Ill.; for the defendant, J. A. Connell, District Attorney.

Case heard Nov. 7, 1911, April 16 and May 7, 1912.

Findings and order of commission entered July 18, 1912, as follows:

The complaint herein is filed under an Act requiring common carriers of freight to provide and maintain side tracks and connections for shippers and receivers of freight, approved June 14, 1909, in force July 1, 1909.

The complaint alleges and the record shows that the complainant is a merchant engaged in the sale of general merchandise and desires to engage in the coal business; that his place of business is about 200 feet north of the intersection of the road of said company with Twelfth st., extended to the city of Quincy, Ill.

The application is for a switch track of sufficient length to hold three cars, at a point on the road of said company east of said Twelfth st., and at a point contiguous and adjacent to lands owned by the complainant, on the north side of the right of way of said company.

The complaint alleges and the record shows that the complainant has agreed to pay such company the price and cost of making and constructing such switch desired by him, and that he is willing and ready to pay a reasonable price for such construction and to keep up and maintain the same at his own cost and expense.

It appearing from the evidence submitted upon the hearing of said cause that such switch and connection is reasonably practical and can be put in with reasonable safety and will furnish sufficient revenue to such railroad company to justify the construction of the same.

And it appearing to the commission that the complainant has a sufficient amount of land nearby, joining the right-of-way of the said defendant road, for the location of said switch track.

It is therefore ordered, adjudged and decreed by the commission that the said defendant road proceed at once to construct in a proper manner and with proper connections with its said road, said switch track of sufficient length to hold three freight cars, as shown by Chicago, Burlington & Quincy Railroad Company's blue print No. 4877 of date of April 29, 1912, and filed as a part of the records in this case, which blue print shows exact location of said switch track, and is referred to herein for certainty.

And it is further ordered by the commission that the complainant herein, the said J. L. Frese, pay, upon the completion of said switch track, a reasonable cost of the construction thereof, to the said Chicago, Burlington & Quincy Railroad Company, and that he make such guarantee of such payment to said defendant company as may be agreed upon between the respective parties prior to the construction of such switch.

By order of the commission this 18th day of July, 1912, dated at Springfield, Ill.

O. F. BERRY, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

RAILROAD AND WAREHOUSE COMMISSION

ON RELATION OF

PETERSTOWN FARMERS' ELEVATOR & SUPPLY CO.

V.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO.

Complaint of refusal to build side track connection to elevator at Peterstown, Ill., filed Jan. 16, 1912.

Appearances—For complainant, J. A. Lamberton, Attorney, Mendota, Ill.; for the defendant, O. W. Dynes, Commerce Counsel, and J. N. Davis, Attorney.

Case heard Feb. 8, 1912.

Findings of commission entered April 11, 1912, as follows:

The petitioner herein is a corporation newly organized under the laws of the State of Illinois, and the petition requests that an order be made requiring the Chicago, Milwaukee & St. Paul Railway Company to build a switch track at Peterstown, county of LaSalle, State of Illinois. The

petition states that the petitioner desires to build an elevator for the purpose of storing and shipping grain on and over the Chicago, Milwaukee & St. Paul Railway, and asks that the said railroad be required to build a switch for the purpose of accommodating such elevator when so erected and ready to transact the business of shipping grain therefrom.

The record shows that no elevator has been erected, but is simply in contemplation. The record also shows that the railroad company declined to build a switch as petitioned for.

The statute under which this proceeding is begun, reads as follows:

"Any railroad being a common carrier of freight, upon application of any shipper tendering or receiving freight or merchandise in carload lots, shall construct, maintain and operate, upon reasonable terms, upon its own right-of-way at any regular station, a switch connection with any shipper's railroad track, which may be constructed to connect with its railroad upon its right-of-way where such connection is reasonably practicable and can be put in with safety and will furnish sufficient revenue business to such railroad company to justify the construction and maintenance of the same and shall furnish cars for the movement of such traffic upon such switch, upon its own rails, to the best of its ability, without discrimination in favor of or against any such shipper."

It will be noted that the language of this statute which requires the building of a switch states, "at any regular station." The record shows that Peterstown is not a regular station, and therefore does not fall within the purview of that statute. The record further shows that it is not a village or incorporated town, and the statute in relation to depots and switches refers to incorporated villages or towns.

The record shows that the application herein is for a switch to be connected with the main line of the Chicago, Milwaukee & St. Paul Railway. As a matter of common knowledge, every switch or every connection of any kind, with the main line of a railroad, increases the danger of operating such road, and it is the policy, not only of this commission, but of all commissions nowadays, to limit the connections to main lines, to such places and for such purposes as are absolutely necessary.

The statute further provides that such application may only be made when the elevator is in existence, and grain or other freight is offered for shipment in carload lots under proper conditions, to such railroad.

The record further shows in this case that Peterstown is only three and a fraction miles from Mendota, and that it is two and eight-tenths miles from Fitchmoor, Mendota being the first station north of the proposed side track, and Fitchmoor the first station south. This undisputed fact clearly indicates that the petitioner is reasonably well situated to places for the shipment of grain or the erection of an elevator at a regular station, if it desired to do so.

The record in this case further shows that there are switches and connections with said railroad for the purpose of switching grain at points named and at several other points within a few miles of Peterstown.

Without going into details, it is sufficient to say that as we construe the law, the commission has no power or authority to order a switch at this point under the facts as shown in this record. The prayer of the petition will therefore have to be denied.

Prayer of petition denied.

By order of the commission this 11th day of April, 1912, dated at Springfield, Ill.

O. F. BERRY, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

RAILROAD AND WAREHOUSE COMMISSION

ON RELATION OF

THE WOODLAND CLAY COMPANY

v.

CHICAGO & EASTERN ILLINOIS RAILROAD CO.

Complaint of refusal to permit switch connection at Woodland, Ill., filed Jan. 26, 1912.

Appearances—For the complainant, C. H. Payson, W. J. Brook-walter and Charles Troup, Attorneys; for the defendant, E. H. Seneff, General Solicitor.

Case heard Feb. 8, and April 25, 1912.

Findings and order of commission entered July 16, 1912, as follows:

The complainant, the Woodland Clay Company, is a corporation of the State of Illinois, engaged in the manufacture of drain-tile at Woodland, county of Iroquois, State of Illinois.

The defendant above named is a common carrier engaged in the transportation of freight and passengers by railroad, doing business in the county of Iroquois and State of Illinois, and running through the said village of Woodland, near the industry of the complainant.

The record shows that the complainant has a drain-tile factory located at Woodland within about six hundred feet of the tracks of the defendant road.

That the complainant applied to the defendant road to furnish it an industry track having physical connection with the tracks of defendant road at Woodland, and running to the plant of said complainant for the purpose of shipping drain-tile and other products from its factory.

The record further shows that at one time the defendant agreed to furnish complainant with such a track under certain conditions, which conditions the record shows were never entirely agreed upon by the respective parties.

Since that time the record clearly shows that the complainant has made additional applications to the defendant to furnish it with said industry track and has tendered its freight in carload lots to the defendant.

The record further shows that a track of this character, if constructed, would be reasonably practical and could be operated with reasonable safety, and would furnish sufficient revenue paying business to said railroad company to justify the construction, maintenance and operation of such a track.

The answer of the defendant road admits that it is a common carrier engaged in the transportation of freight and passengers; admits that the complainant is engaged in the manufacture of drain-tile at Woodland, in the county of Iroquois, State of Illinois.

The answer denies that the complainant has built any track leading from its said factory to the right-of-way of the defendant road, but states that until the complainant constructs a track leading to the right-of-way of the defendant road, there is no legal obligation upon said defendant to provide a switch and track.

It appearing to the commission from the statements of the respective parties herein, that for a considerable period of time there has been an attempt made from time to time between the respective parties to agree upon some plan in relation to such industry track, and the matter of the location and construction of such a track having been by this commission referred to its consulting engineer, and he having reported thereon, which report is a part of the records herein, and the commission being fully advised in the premises, finds

That the complainant herein, the Woodland Clay Company, is entitled to a track connection with the said defendant road on the following conditions:

That the said complainant, the Woodland Clay Company, shall proceed at its convenience to build a single track of standard gauge from its said industry or factory to the right-of-way of the said defendant road; that the said track shall be built according to and over the route provided for in Railroad and Warehouse Commissioners' map No. 7, which is herein referred to for certainty; that the same shall be built of substantial material and well constructed for practical switching purposes, and when so completed, subject to the approval of this commission.

It is further ordered by the commission that when said track is so built to the right-of-way of the said defendant company, the said defendant company shall construct, maintain and operate upon its own right-of-way a switch having a physical connection with the elevator track located on its right-of-way and extended with a track having physical connection with the track of the complainant when constructed, all as indicated on Railroad and Warehouse Commissioners' map No. 7, and hereinabove referred to.

The commission further finds that the location of the switch and track connection provided for on said Railroad and Warehouse Commissioners' map No. 7, is a reasonable and practical one, and that the

same can be built and operated with reasonable safety; and the question of the division of the expense covering the construction of said industry track, and the compensation to be allowed therefor, is hereby reserved by this commission for further hearing and order.

It is further ordered that the said defendant road shall within fifteen days after said track is properly built from the factory of said complainant to the right-of-way of the defendant road, and accepted by this commission, construct said switch and trunk connection, to be located on its right-of-way and physically connected with the track of the complainant.

By order of the commission, this 16th day of July, 1912, dated at Springfield, Ill.

O. F. BERRY, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

RAILROAD AND WAREHOUSE COMMISSION

ON RELATION OF

MAZON FARMERS' ELEVATOR CO., MAZON, ILL.

V.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY CO.

Complaint of refusal to furnish switch connection at Booth Station, Ill., filed June 24, 1912.

Appearances—For the complainant, Hayes & Murray, Attorneys, Morris, Ill.; for the defendant, Glennon, Cary, Walker & Howe, by John F. Finerty, Attorneys, and George B. Gillespie, Attorney.

Case heard July 5 and 11, 1912.

Findings and order of commission entered July 18, 1912, as follows:

The complainant, the Mazon Farmers' Elevator Co., is a corporation, incorporated under the laws of the State of Illinois, and is engaged in the business of buying and selling grain, coal, lumber and building material and of storing grain; its principal office is in the village of Mazon, county of Grundy, Ill., where it has a grain elevator and also has a grain elevator at Gorman, Ill.

The complainant, in addition to the elevators mentioned, has a warehouse and elevator located at Booth Station, Ill., which station is located on the Cleveland, Cincinnati, Chicago & St. Louis Railway.

The complaint alleges and the record shows the fact that the complainant has erected a grain elevator and warehouse sixteen feet from the south line of the defendant's right-of-way at said station; that said

warehouse and elevator is twenty-four feet square and thirty-two feet in height, and fully equipped as a grain elevator, having an engine, grain carriers, dump, bins and scales, and that at the present time has 6,000 bushels of grain in said elevator, which is ready to be delivered into the cars of the said Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

The complaint charges and the record shows that the defendant company has for many years last past and is at the present time, operating a side track or switch for the loading and unloading of goods and grain at Booth Station; that such switch is on the same side of the main line of said railroad and runs up to within forty or fifty feet of the premises of the complainant; that the defendant road is now and has been for years placing cars upon said switch and accepting grain from another elevator located at said station.

The complaint charges and the record shows that on or about the 15th day of February, 1912, the complainant made demand upon the defendant, the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, to provide a side track or switch for the acceptance of its grain, by extending switch the defendant already had located at said Booth Station about 400 feet onto the land of the complainant, and this complainant then and there tendered the cost and expense of such extension; that the complainant had repeatedly since that date up to the present time continued to demand from said defendant that it furnish to complainant, at complainant's cost, an extension or a new switch to its warehouse for the carrying of said grain, which demand the said defendant, the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, has refused.

This complaint is filed under section 3 of an Act regulating the receiving, transportation and delivery of grain by railroad corporations and defining the duties of such corporations with respect thereto, approved April 25, 1871, and in force July 1, 1871, a part of which section reads as follows:

"Every railroad corporation which shall receive any grain in bulk for transportation to any place within the State shall transport and deliver the same to any consignee, elevator, warehouse or place to whom or to which it may be consigned or directed: *Provided*, such person, warehouse or place can be reached by any track owned, leased or used, or which can be used by such corporation; and every such corporation shall permit connections to be made and maintained with its track to and from any and all public warehouses where grain is or may be stored."

Section 5, article 13, of the Constitution of 1870, in relation to warehouses, reads as follows:

"All railroad companies receiving and transporting grain in bulk or otherwise shall deliver the same to any consignee thereof, or any elevator or public warehouse to which it may be consigned: *Provided*, such consignee or the elevator or public warehouse can be reached by any track owned, leased or used, or which can be used, by such railroad companies; and all railroad companies shall permit connections to be made with their track so that any such consignee, and any public warehouse, coal bank or coal yard may be reached by the cars on said railroad."

The section of the Constitution referred to above says:

"All railroad companies shall permit connections to be made with their track so that any such consignee and any public warehouse, coal bank or coal yard may be reached by the cars of said railroad."

The command to the defendant road to permit such connection is absolute and imperative. Its legal duty in the premises is so plain that it should not be questioned.

The defendant is a railroad and a common carrier; it has a side track upon its right-of-way nearby, where the elevator of the complainant is located. The record shows the elevator properly built and equipped, and also containing grain which the complainant desires to ship upon the railroad and cars of the defendant.

The record shows that the complainant has made application to the road for such connection, offering to pay the necessary expenses for such connection, and that, without any reasons appearing in the record, the defendant road has refused to make or permit such connection.

The record clearly shows that the complainant has complied with the necessary statutory and constitutional requirements and, therefore, is entitled to the connection with the defendant road, to-wit, the Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

It is therefore ordered, adjudged and decreed by the commission that the Mazon Farmers' Elevator Company be, and they are hereby, permitted to make connection with the track of the said Cleveland, Cincinnati, Chicago & St. Louis Railway Company at a convenient point near their said elevator at Booth Station, Ill., for the purpose of receiving and shipping grain and coal as provided for in the statutes and Constitution of the State of Illinois, and that in making said connection they shall do the same in a way that will not unnecessarily interfere with the tracks and traffic of the said Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

It is further ordered that the complainant at once proceed to build a switch from their said elevator upon the premises belonging to said complainant, directly towards the switch now upon the right-of-way of the said defendant road, and so that the same can be properly connected therewith upon an extension of said switch being made on the right-of-way of the said defendant road to the premises owned by the complainant herein.

It is further ordered that upon the completion of said switch by the said complainant from said elevator to the right-of-way of the defendant road, the defendant road shall immediately extend its said switch track upon its right-of-way to and make connection with the said track of the complainant.

It is further ordered that if the said Cleveland, Cincinnati, Chicago & St. Louis Railway Company desires to make an extension of their said side track at Booth across their right-of-way and across the right-of-way of the complainant to the elevator of the complainant here, that they

shall have the right to do so, and that the said Mazon Farmers' Elevator Company shall pay for all of said switch track upon its said premises a reasonable cost of said construction and connection.

By order of the commission this 18th day of July, 1912, dated at Springfield, Ill.

O. F. BERRY, *Chairman;*

B. A. ECKHART, *Commissioner;*

J. A. WILLOUGHBY, *Commissioner.*

CROSSINGS.

THE CHICAGO & CALUMET TERMINAL RAILROAD CO.

v.

THE CHICAGO, BURLINGTON & QUINCY RAILROAD CO.

Appearances—For petitioner, Col. R. S. Thompson and H. S. Monroe; for respondent, Wirt Dexter.

The petitioning company, the Chicago & Calumet Terminal Railroad Company seeks by this proceeding a decision of this commission under the act in force July 1, 1889, compelling respondent, the Chicago, Burlington & Quincy Railroad Company, to permit petitioner to cross respondent's tracks at a point in the village of LaGrange, Cook county, Ill., on grade. The point of proposed crossing is near fourteen miles out from respondent's Chicago depot. The prayer of the petition is resisted on the ground that a grade crossing at the point in question would "unnecessarily impede and endanger the travel and transportation" upon respondent's road.

The petition alleges, among other things, the following: That petitioner is a corporation organized and existing under and by virtue of laws of the State of Illinois; that it has laid out its route and partially constructed its tracks from Lake Michigan to near the Des Plaines river, and reached a point near the right-of-way and railroad tracks of respondent, and is desirous of building its road and constructing its tracks across the right-of-way and tracks of said respondent near where they cross the west line of section three (3), town thirty-eight (38) north, range twelve (12) east, in Cook county, Ill.; that it, the petitioner, desires to cross said tracks upon a level with its own tracks, and offers to be at the entire expense of constructing said crossing, introducing and maintaining a system of interlocking signals, paying all salaries and expenses of the same, and to give all the trains of respondent preference and precedence at said crossing; that petitioner has demanded of respondent that it be permitted to cross at grade, but permission to do so has been refused; that respondent insists that petitioner cross said tracks and right of way at an elevation of not less than twenty-one feet clear above the top of the rails of petitioner's track, which will make an elevation of from twenty-five to thirty feet; that the point at which

petitioner desires so to cross is part of a level plain extending miles each way; that a crossing upon grade with proper signals and appliances will not unnecessarily impede or endanger the travel or transportation of the respondent company; that an overhead crossing is more dangerous to foot and carriage passengers seeking to cross the tracks of the road running under an elevated crossing than a crossing on its grade; that the property owners in that vicinity are opposed to such overhead crossing, and threaten to bring suit for damages to enjoin the same; that the trustees of the town of LaGrange wherein said proposed crossing is located are taking measures to enjoin the erection of an overhead crossing for the reason that such a crossing is unnecessary and will create a perpetual nuisance, and will injure and depreciate the value of property in its immediate vicinity. The petition prays for a decision of the commission prescribing the place where and the manner in which said crossing shall be made.

In answer to this petition the respondent company admits that petitioner has laid out its route and partially constructed its tracks as alleged; that demand was made upon it by petitioner for a grade crossing, and that respondent, believing that a grade crossing would unnecessarily impede both the travel and transportation upon its railway, refused said demand. Respondent denies the averment that said proposed grade crossing will not unnecessarily impede or endanger the travel or transportation upon its railway, and alleges the contrary to be the fact; and says that respondent owns and operates 6,000 miles of railroad converging at Chicago, which is its eastern terminus, and has traffic arrangements with other companies, connecting with respondent's lines; that all traffic over respondent's road destined to or from Chicago, or east by way thereof, passes over said tracks proposed to be crossed; that in the regular course of respondent's business, fifty trains in each direction, or 100 trains in all, each day pass over respondent's tracks at the point of the proposed crossing, about half being freight trains and the other half passenger trains; that respondent has now three tracks at the point in question and the increase of its business will soon require the building of a fourth, and that the increase in population and development of business are likely to cause the necessity for double the number of trains upon respondent's tracks within ten years; that respondent in addition to its general passenger and freight trains is now doing a very large suburban business, nearly all of which originates west of said proposed crossing; that about 2,500 suburban passengers pass over respondent's road each day at the point of said proposed crossing, which suburban traffic is constantly increasing at the rate of 25 or 30 per cent per year; that the point of said proposed crossing is at the foot of a maximum grade, and that trains at said point both ways run at a maximum speed; that west-bound trains are obliged to run at high speed at said point for the purpose of making the ascending grade; that if the proposed grade crossing is made all trains of respondent will be compelled to reduce speed at the point of crossing to a very low rate; that in addition to the delay which will thus be caused, many trains will be compelled to stop and wait for trains on petitioner's road to pass the crossing; that on account of the necessity of running at a low rate of speed and making

possible stops at this point, respondent's west-bound trains could not run for the grade at this point as heretofore, and respondent would be compelled for this reason to reduce the length of many of its west-bound freight trains; that it is entirely practicable for petitioner to cross respondent's railway either by an overhead or an under crossing; that the trustees and citizens of the town of LaGrange where said crossing is located are opposed to a crossing at grade as unnecessarily impeding and endangering public travel.

At the hearing respondent, having abandoned its previous alleged contention for an overhead crossing, presented to the commission a proposition and estimate for an under crossing, which proposition and estimate contemplated the raising of respondent's roadbed by petitioner, at the point of the crossing to an elevation eight feet above its present position, being in all nearly twelve feet above the natural surface, and that the petitioner should make a cut twelve feet below the natural surface at the point of crossing, so as to admit of its trains passing under the tracks of respondent.

Upon proof being made, however, to the effect that the stage of high water in Salt creek, about one mile distant, which would form the only outlet for drainage of the proposed cut, would not admit of the cut being drained, if extended to the depth of twelve feet as proposed, the respondent company presented modifications of its proposition and estimate to meet such proofs. Respondent's amended proposition contemplates the raising of the Burlington tracks about eleven feet instead of eight as before proposed, and a corresponding reduction of the depth of the cut to be made for petitioner's road so to admit of what respondent contends would be complete drainage to Salt creek during high water; all the work to be done of course by the petitioning company. In addition to this respondent's counsel at the close of the hearing made an oral offer that respondent would pay one-third of the increased cost of constructing the crossing in accordance with their amended proposition over and above what such cost would be if the crossing were made at grade; also one-third of all damages adjudged against petitioner and in favor of adjacent property owners on account of the construction of the crossing in the manner proposed; also one-third of the increased cost of all switch connections. It may be said, in passing that these propositions of respondent to permit its tracks to be raised and to pay part of the expenses of the crossing are not within the power or jurisdiction of the commission to be ordered or enforced, and would depend entirely upon the respondent's own voluntary stipulation.

There is little real conflict in the evidence heard by the commission except upon a few subsidiary questions. It is conceded that these roads approach each other upon a level plain which offers no natural facilities for any crossing other than at grade; nor can this be avoided by any change in the place of crossing proposed; the adjacent country is all flat. It is also a fact not controverted that petitioner had obtained its charter and begun construction of its road before this law was passed; that its road is to be chiefly for the carriage of freight, its object be-

ing, as its name indicates, to form connections with the various lines of road out from Chicago, including of course the lines of respondent, so as to distribute among these lines the products of the large factories in the vicinity of Calumet lake. So the allegations of the answer touching the extent of respondent's passenger and freight traffic, the number of its trains, the state of its grade at the crossing point, and the resultant necessity of speed being made by its trains are practically uncontroverted. It is conceded that to make a non-grade crossing a clear passage way of twenty feet from top of rail to lowest point of superstructure above is necessary; and that, to obtain this twenty foot clearing, there would be a necessity for a considerable additional distance taken up by rails, ties, ballast and side ditches, for drainage of the servient roadbed.

In the course of the hearing memorials and petitions were presented from the municipal authorities and residents of several towns on the line of respondent's road, including LaGrange, favoring an under crossing. Before the proposition for such an under crossing had been made, however, a petition had been numerously signed by adjacent property owners in LaGrange strongly favoring a grade crossing as against the overhead crossing then contemplated. It may therefore be taken that public sentiment among residents in the vicinity generally favors, first an under crossing by petitioner if that can be had, and if not then a grade crossing; and that an overhead crossing is more objectionable than any other. Such is the import of the public expressions before the commission, which, though perhaps not in strictness legal evidence, the commission felt constrained to hear and consider for whatever they might be worth. Many persons owning property immediately adjoining the roads naturally oppose the unsightliness and inconvenience of either a high embankment or a deep cut, insisting that the value of such adjacent property would be thereby greatly lessened, a conclusion not easily to be resisted.

One question upon which there is some conflict in the evidence is, whether or not a reduction of speed is necessary at crossings where the latest improved inter-locking signals and devices are in use. Upon this question we think the evidence preponderates in number and credibility that it would not be perfectly safe (at least so long as no device for a continuous rail at crossings is brought into use) for trains to pass crossings otherwise than "under control." The commission has not so far, at any rate, seen its way to issue permits to railroads to pass crossings having interlocking devices, without the train being at the time under "control." As to what is "control," it appears from the evidence, that for an ordinary passenger train, "control" would be a speed of about fifteen miles per hour; and this would, of course, vary inversely with weight and consequent momentum of train.

There is also some conflict upon the question as to whether improved crossing devices have entirely eliminated the element of danger at railroad crossings, where the same are in use. That they have great efficacy in preventing accidents is conceded. Where the latest interlocking devices are used there is, indeed, very little probability of a collision

between trains. A derailment of one train may occur if the engineer is not attentive to signals; but a collision would be possible only in the event that the derailed train were heavy enough or moving with sufficient momentum, to pass over the ground or ties from the derailing point up to the crossing proper, a distance usually of about 300 feet.

Under the evidence before us as to danger and delay our view constrains us to consider this case upon the basis—

First—That wherever two trains are liable even by possibility to pass through the same space there must necessarily be some danger to those who ride, and

Second—That a reduction of speed of trains down to the point of “control” would be necessary, or at least prudent, at all grade crossings however equipped. We see, therefore, that there must be some delay to travel and transportation, and also a small liability to danger in the case of all grade crossings. Whether or not such delay and such danger would be “unnecessary” within the meaning of that term as used in the statute, all circumstances and surroundings of the proposed crossing duly considered, is the question for our decision.

Most of the evidence before us has been addressed to the question of fixing the point of high water in Salt creek. The high point is important to be arrived at with reasonable certainty as it bears directly upon the question of drainage, and drainage is an essential element of respondent's plan. If the point fixed by some of petitioner's witnesses be taken as the ordinary high water point, an under crossing by the petitioning road would be rendered entirely impracticable, as only a very shallow cut could be drained in time of high water; and an under crossing on that basis would really mean the raising of respondent's road to such height as would make the crossing in fact an over crossing by that road, subject to the many and grave objections such a structure naturally raises. Upon the other hand, if we should assume the lowest point fixed by some of the witnesses of respondent as being high water mark, feasible drainage could be obtained for a twelve-foot cut as contemplated by the first proposition of respondent. Without discussing the evidence in detail, which is deemed unnecessary, the commission have arrived at the conclusion from consideration of all the testimony touching the question, that in order to insure drainage it would be necessary, in case an under crossing should be adopted, for the Burlington tracks to be raised at least twelve feet above their present position and the tracks of the petitioning road to be depressed below the surface sufficiently after providing for side ditches, ballast, ties and rails, to leave twenty feet in the clear between the top of rail and the lowest point of girder.

In addition to the above questions there has been placed before us some general expert testimony as to the merits and demerits of grade crossings, with reference to the safety and convenience of the traveling public. The weight of this testimony is against the general policy of grade crossings, a view in which no doubt all will concur, wherever conditions are at all favorable to crossings of some other kind.

This case derives its chief importance from the fact that it is the first one arising under the act conferring jurisdiction upon the commis-

sion, and a conspicuous position is therefore likely to be assigned to this ruling as a precedent. We think it proper, however, to observe that a ruling of the commission in any individual case, arising under this statute, cannot be taken as necessarily controlling other cases except where, in the opinion of the commission, the same conditions obtain; and since the conditions can rarely be the same in any two cases, it follows that in the application of this statute each crossing must be considered essentially by itself.

The act under which this proceeding is had is short and may be quoted in full. It is as follows:

(LAWS OF 1889, PAGE 223.)

"AN ACT in relation to the crossing of one railway by another, and to prevent danger to life and property from grade crossings."

"SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That hereafter any railroad company desiring to cross with its tracks the main line of another railroad company shall construct the crossing at such place and in such manner as it will not unnecessarily impede or endanger the travel or transportation upon the railway so crossed. If, in any case, objection is made to the place or mode of crossing proposed by the company desiring the same, either party may apply to the Board of Railway and Warehouse Commissioners, and it shall be their duty to view the ground and give all parties interested an opportunity to be heard. After full investigation, and with due regard to safety of life and property, said board shall give a decision, prescribing the place where and the manner in which said crossing shall be made, but in all cases the compensation to be paid for property actually required for the crossing, and all damages resulting therefrom, shall be determined in the manner provided by law in case the parties fail to agree."

"SEC. 2. The railroad company seeking the crossing shall, in all cases, bear the entire expense of the construction thereof, including all costs and incidental expenses incurred in the investigation by the Board of Railroad and Warehouse Commissioners."

"APPROVED May 27, 1889."

From the terms of the above act, what, if anything, may we deduce as to the general policy of the State touching this question of crossings? Certainly we cannot from it infer that the law-makers intended to abolish grade crossings. Had that been their object it was competent for them to have said so in plain terms. This was not done; but a tribunal was instead designated to pass upon cases as they arise. From this we must infer that the Legislature believed there would be some cases where grade crossings would be proper and others where over or under crossings would be proper. Each case was left by the Legislature to be decided upon its merits. This commission would have no more right under the statute to set up a general unvarying standard for all future crossings in Illinois than it would have to enact a law which the legislators did not think proper to enact for themselves.

In the exercise of the discretion so vested in the commission, a strong, and in many cases, controlling consideration would be the natural configuration of the ground at and near the place of crossing. The fact that the statute authorizes the commission to pass not only upon the mode but also upon the place of crossing seems to imply, that it might be proper in some cases to vary the place of crossing with the view of striking the road to be crossed at a more favorable point for a non-grade crossing. It will not be questioned for a moment that wherever the lay of the ground is favorable to a crossing over or under without great additional expense, or the erection of unsightly embankments to the great injury of property, a non-grade crossing should be under this law preferred. We have seen, however, that the topography of the country does not in the case before us favor a non-grade crossing; and if the locality were remote from a large center of population and the road proposed to be crossed were not one over which a large traffic daily passes, the case would be quite easy of solution. But the contrary is the fact. The point is near a rapidly growing city, having already a population of twelve hundred thousand; nearly one hundred trains, passenger and freight, pass this point daily and the number is likely to steadily increase. Already three tracks are in use upon respondent's road, and there will soon be need for a fourth. Several suburban stations of importance lie beyond this crossing. Under such circumstances are the delay and the danger from a grade crossing such as to warrant the commission in ordering the under crossing proposed?

The increased cost of the proposed under crossing, over that of a grade crossing, is not fixed by the evidence with certainty, there being disagreement among the engineers of the companies. This increased cost may be safely placed within the limits of from \$125,000.00 to \$150,000.00, with a large additional sum for increased cost of switch connections, sidings, turn-outs, etc., incidental to the non-grading status; and while the commission is exceedingly loth to weigh even the possibility of the destruction of human life against a mere matter of dollars, yet the serious financial hardship, under which an order for an under crossing would lay petitioner, can not be ignored. The petitioning company obtained its charter at a time when the law permitted the road seeking a crossing such as this to select for itself the place and mode of crossing. It could, under the former state of the law, have itself designated the character and conditions of the use sought here, and, under the eminent domain act, could have had damages assessed on the basis of its own proposition, whether for a grade crossing or otherwise, (113 Ill., 156). Having begun the construction of its road, petitioner is met with this new statute, and asked to make an increased outlay of over \$100,000.00 in this single crossing, exclusive of the one-third respondent offers to pay; and, if compelled to do this in the present instance, it is, to say the least, not improbable it may be required to do the same with the many other lines of road across which its route is projected. To do this would, perhaps, cripple, if it would not entirely forbid the enterprise.

Considering further the subject of switch connections above alluded to, it should be remembered the very object of the petitioning company is to form these connections with the several roads, leading from Chicago, across which its survey runs.

Under paragraph 6, section 19, Act of 1872, for the incorporation of railroad companies, petitioner has the right:

"To cross, intersect, join and unite its railways with any other railway before constructed at any point in its route and upon the grounds of such other railway company with the necessary turnouts, sidings and switches and other conveniences in furtherance of the business of its connections; and every corporation, whose railway is or shall be hereafter intersected by any new railway, shall unite with the corporation owning such new railway in forming such intersections and connections and grant the facilities aforesaid, etc."

This section is as much a part of the law of Illinois as that conferring the jurisdiction now to be exercised. Under it, petitioner will want switch connections with each of the lines where the mode remains yet to be determined, nine or ten in number. Indeed, as we have said, the very object and purposes of petitioner is the forming of these connections; and, in their formation, the statute enjoins it as a duty upon the roads crossed to "unite" with petitioner. The inconvenience, expense and unsightliness which such switch connections, turnouts, etc., must occasion in each instance if a non-grade basis is adopted on this level plain will be realized upon a moment's reflection. Either a separate track would need to be built on the natural surface alongside the Terminal Road's excavation, starting at the head of the cut, or else a switch track would have to be taken out from the cut a considerable distance back from the crossing point and gain the surface by a sharp grade; and this would be less than half the difficulty. Respondent's tracks would, on the basis of the proposition submitted, be about fifteen feet high, which elevation would have to be overcome by an embankment for switch track, describing a curve long enough in distance to make the ascent practicable for engines with loaded cars. Stated another way, whether a non-grade crossing be got by depressing one road, or by elevating the other, there would be at best a distance of about twenty-two feet from rail to rail to be overcome by a feasible track and roadbed for switches, turnouts and sidings. That it could be done is not disputed; but to do it would certainly require a long track, a high embankment, a probable cut, and, consequently, a much more extensive right-of-way than if a grade crossing were used. All this would tend to disfigure the neighborhood of the crossings so constructed, inflicting, perhaps, a damage upon property in a growing village which would never be adequately measured by a judgment in condemnation or for damages.

Besides these considerations, the commission is satisfied from previous personal investigation, as well as from the evidence heard, that interlocking devices which are fully recognized by statute in Illinois, the most approved patterns of which petitioner stipulates, at its own expense, to put in and maintain, giving all trains of respondent the right-of-way, are so efficient, as demonstrated by actual use, that they reduce both

the delay and the danger to a very small limit. With the watchman in the signal tower instructed to give the Burlington trains precedence, it must be very rare indeed, that one of that company's trains need come to a full stop. So far as its freight trains are concerned, the delays would be unimportant; and the mere matter of lowering the speed of passenger trains to fifteen miles per hour to conform with permit, and good usage, need not occasion, as the commission believe, a delay to any given train exceeding two minutes, and, with a light train, even less, which is not a very great matter.

If the danger and delay to result from a grade crossing at this point are regarded as so important, it would seem a wide field is open for the management of the respondent company to reduce both delay and danger at some of its present grade crossings where no interlocking devices are in use; and the same remark well applies to other managements of old companies, members of which have testified before us in this case urging no more grade crossings. Certain it is, that when no interlocking devices had been recognized by law, or were in use, and both danger and delay were confessedly much greater, it was the practice of nearly all the companies in this State to build crossings on grade.

The greater solicitude, arising now when the occasion is less, might suggest to some (though the commission certainly does not take that view), that these old established lines, now that they no longer have occasion to build extensions, are not averse to imposing upon new candidates conditions which rest largely upon specious but unpracticed precepts.

Nothing here said is, however, to be understood as committing us to any general policy favoring grade crossings, as such. On the contrary, wherever circumstances favor, or even permit, we should much prefer to separate the tracks of crossing roads. We have hesitated long before seeing our way to order a grade crossing even in the present case. If respondent's tracks were already elevated to a point which would render an under crossing with good drainage feasible, we should perhaps be inclined to put the petitioning road under. With the circumstances and conditions as they now in fact confront us, we are unable to do so.

It is therefore decided and ordered that petitioner have leave to cross with its tracks, the tracks of respondent at the point designated in its petition on grade, and level with the tracks of respondent; but only upon condition that before its road is used at said crossing point for the passage of trains it will at its own expense set up and fully equip ready for use at said crossing, the latest, best and safest interlocking appliances, signals and devices, together with electric annunciators to announce the approach of trains, and also upon condition that before proceeding to construct such crossing, petitioner give bond in the penal sum of \$20,000.00, with securities to be approved by respondent, or the commission, conditioned, that it will perpetually maintain such interlocking system in good order and condition, and pay all salaries of men needed to efficiently maintain and operate the same.

Inasmuch as no general rules of practice for proceedings under this act have been heretofore promulgated, it is ordered that ten days be al-

lowed from the date of filing this opinion in which either party may file petition for re-hearing, first giving notice to the opposite party, in analogy with the rule of the Supreme Court of Illinois touchings re-hearings; and the operation of the above decision and order will be suspended until any petition which may be so filed is heard and disposed of.

Opinion filed Nov. 30, 1889.

THE CHICAGO, MADISON & NORTHERN RAILROAD CO.

V.

THE BELT RAILWAY CO. OF CHICAGO,

AND

THE CHICAGO & WESTERN INDIANA RAILROAD CO.

Appearances—For petitioner, B. F. Ayer and E. H. Gary; for respondents, Osborn & Lynde.

The petitioning company was incorporated August 3, 1886, with authority to construct a line of road extending from Chicago to a point in Stephenson county on the Wisconsin state line. It now seeks to cross with its tracks the line of the Chicago & Western Indiana Road. (which road is now operated under a lease by the Belt Railway Co. of Chicago, co-respondent), at a point near the center of the northwest quarter of section thirty-four (34), in the town of Cicero, Cook county, Illinois, through the west half of which section the road of respondents runs in nearly a due north and south direction. Objection made by respondents to the place of crossing proposed gives rise to the present inquiry. The mode of crossing is not in controversy, it being conceded the crossing, wherever made, may be at grade.

The place of proposed crossing is within the corporate limits of the Town of Cicero, which town has power under the general act of incorporation "to provide for and change the location, grade and crossings of any railroad." The trustees of the town on Dec. 4, 1888, granted by ordinance the right of way to petitioner through the town, providing among other things as follows:

"At the west line of section thirty-three (33), the northerly line of the right-of-way of said railroad company shall be the south line of 33d st., as laid out by T. F. Baldwin in his subdivision of the northwest quarter of section thirty-three (33), township thirty-nine (39) north, range thirteen (13) east of the third principal meridian, said south line of 33d st., being 1,360 and 92-100 feet south of the northwest corner of said section thirty-three (33); thence the track or tracks of said railroad eastward through said section thirty-three (33) shall be laid south of 33d st.; and through section thirty-four (34), township thirty-nine (39) north, range thirteen (13) east of the third principal meridian, shall be laid south of the north half of the north half of said section.

"Said tracks to be laid upon any ground now owned or that may hereafter be acquired by said railroad company upon the line of said route, but nothing in this ordinance shall be construed so as to authorize the said company to occupy any streets or alleys lengthwise.

"Provided, that when the railroad tracks of the said company shall cross any street, alley or other line of railroad, such crossing shall not be on any trestle work or viaduct; and when the tracks of said company shall cross the tracks of any other railroad company, such crossing shall be at grade."

This right of way was granted upon several conditions expressly named in the ordinance covering the questions of rates of fare to be charged to and from Chicago, the location of certain stations in the town and the payment of \$10,000.00 by the company into the town treasury. The company promptly accepted the conditions, paid the \$10,000.00, acquired a right-of-way through sections thirty-three (33) and thirty-four (34), near the northerly limit fixed by the ordinance, and proceeded with the construction of the road, eighty per cent of the work being done by May 1, 1889, as testified by the engineers of petitioner.

As the work progressed negotiations were in progress between the general managers and engineers of the companies concerned with regard to the terms on which the new road should cross the tracks and right-of-way of respondents at the point which had been selected. These negotiations have been proven before the commission at great length, it being claimed by petitioner that its officers had the full consent and agreement of respondents to make the crossing at the point now proposed. This claim respondents deny, and assert that while many conferences were had no agreement was ever finally made, and that the question whether or not any such agreement was made is for the courts and not for the commission. In the negotiations it was assumed upon both sides that petitioner had the right to select itself the place of crossing; and up to July 1, 1889, when the statute went into effect conferring jurisdiction upon the Railroad Commission in such cases, this assumption was entirely correct.

Respondents insist that the place proposed by petitioner for crossing is peculiarly disadvantageous to them. The proposed crossing place is a little less than one mile south of the place where respondents' tracks cross the C., B. & Q. R. R. by means of viaduct, which viaduct is approached from the south by a sharp ascending grade; while a little less than a mile south from the proposed crossing the tracks of respondents' road cross the Atchison, Topeka & Santa Fé Railroad, which at that place runs north of and parallel with the canal. South of the canal and parallel with it is the Chicago & Alton Railroad. Respondents insist the place selected is dangerous on account of the liability of the long and heavy trains of the Belt Line Company to become stalled on the grade ascending to the Burlington viaduct, and the further liability of such trains to break their couplings upon the viaduct and precipitate loose, unmanageable cars down the grade upon this crossing. It is also claimed that the entire distance northward between the Atchison tracks to the Burlington viaduct is needed as an uninterrupted running ground

for heavy trains to acquire necessary momentum to make the grade at the viaduct; also that heavy trains coming southward over the viaduct are liable to be uncontrollable at the point of crossing, and that no interlocking appliance has been suggested or can be devised which will render a crossing at this point safe.

Respondents ask that petitioner be compelled to vary the course of its line to the southward from its present location, beginning such deviation in the northeast quarter of section thirty-two (32), proceeding thence southeasterly through section thirty-three (33), emerging from the latter section near the southeast corner thereof, crossing respondents' tracks near the point where the same are crossed by the Atchison road, and south of the south line of section thirty-four (34), that from such point of crossing petitioner's road should proceed parallel with the Atchison to a point in section thirty-six (36), where it should again reach the line of its present location. The advantage claimed for such a change in petitioner's course and place of crossing is that it would enable the crossings of the Atchison, the Alton and that of petitioner's road to be interlocked by a single system, and would leave respondents the distance of about a mile and three-quarters southward from the Burlington viaduct free of obstruction over which northward trains could run for the grade.

It is proved before us that the additional distance which would be traversed by such a diverted line would be a little over 2,100 feet, and the additional cost to petitioner of such a change of location would be \$153,000.00. Petitioner insists that the crossing as now proposed can be safely interlocked, and that by placing electric annunciators at the Burlington viaduct on the north, and at or near the Atchison crossing on the south to notify the man in the tower of the approach of respondents' trains at these distant points, this crossing if equipped with a Saxby & Farmer machine would not materially obstruct or endanger the business of respondents, consisting as it does entirely of freight.

We have not attempted to state all the facts and contentions in detail, but only sufficient to show the nature and scope of the controverted questions. It will be seen three questions have been the subjects of controversy before us:

First—Have the parties by private agreement settled the point of crossing for themselves?

Second—Will a crossing at this point equipped with the interlocking and signaling device proposed result in "unnecessary" delay or danger, or both, to transportation and travel upon the road of respondents?

Third—Had the action of the town authorities of Cicero, providing for the location of petitioner's line, and the subsequent acts done and expenditures made by petitioner in pursuance of such action, before the statute of 1889 was passed, or took effect, so far settled the location of petitioner's road and consequently the place of this crossing that this commission can not now legally change it?

There is undoubtedly some force in the objection urged against this place of crossing; but the liability to delay and danger, has we think, been much exaggerated by some of respondents' witnesses. It is not pro-

posed, however, to discuss the evidence in detail upon this branch of the case; nor is it proposed to discuss in detail the question whether or not the parties reached a binding agreement in their negotiations during the summer of 1889. In the view taken of the case by the commission an answer to the last of the three questions stated above effectually disposes of the case. To that question we shall now devote a few concluding words.

The act conferring jurisdiction upon the commission in these crossing cases was approved May 27, 1889, and took effect July 1, thereafter. Under the law existing prior to the taking effect of this act, it was the right of the company seeking a crossing to propose its own place and mode, and proceed accordingly under the Eminent Domain act; provided the place of crossing were outside the corporate limits of any city, town or village. If the place were within such a municipality, then while the railroad to be crossed had itself no more power of objection against the place or mode than though the place were outside, yet the power of the road proposing the crossing was in that case to be exercised in accordance with the power of such municipality expressed in the statute "to provide for and change the location, grade and crossings of any railroad," a power the general act for the incorporation of railroads expressly preserves to the municipal authorities. The power to locate conferred in the petitioner's charter had to be exercised in accordance with the provisions made by the municipality. (Dunbar's case, 100 Ill., 110.)

We have seen the town of Cicero did act by ordinance in this matter Dec. 4, 1888. True a definite line for petitioner's road was not fixed at the particular point of crossing, but a definite point was named at the west line of section thirty-three (33) to which the road should run, and it was further provided that "thence the track or tracks of said railroad eastward through said section thirty-three (33), shall be laid south of 33d st.; and through section thirty-four (34), * * * shall be laid south of the north half of the north half of said section." The point to which respondents insist this crossing should be moved is entirely south of the south line of section thirty-four (34), and would not for that reason comply with the ordinance.

The question now presented is whether by acquiring its right of way and locating and grading its road upon the present line at a time when it had a perfect legal right to exercise its own discretion in the premises subject only to the direction of the town of Cicero which then had unquestionable jurisdiction to provide for the location of railroads, petitioner has not acquired substantial rights which can not be disturbed by any order of this commission. The question is not precisely whether the act of 1889, under which we proceed, has repealed the statute conferring upon cities, towns and villages power over this subject, but is rather this: Assuming that the act of 1889, is by implication a repeal of the former power of towns and villages, has there not been acts done and rights acquired under an existing state of law which could not be affected by such a repeal and by the conferring of a new jurisdiction upon this commission?

Section 4 of the act to revise the law in relation to the construction of statutes, approved March 5, 1874 (omitting immaterial words), provides as follows:

"No new law shall be construed to repeal a former law whether such former law is expressly repealed or not as to any * * * act done * * * or any right accrued or claim arising under the former law, or in any way whatever to affect any such * * * act so committed or done * * * or any right accrued or claim arising before the new law takes effect; save only that the proceedings thereafter shall conform so far as practicable to the law in force at the time of such proceeding. * * * This section shall extend to all repeals either by express words or by implication whether the repeal is in the act making any new provision upon the same subject or in any other act."

The petitioning company at a time when under the law it might judge of the propriety of the location of its line and the place of crossing other roads, subject only to the discretion vested in the town board of Cicero, acquired its right of way, constructed eighty per cent of its road, paid \$10,000.00 into the treasury of the town of Cicero, all in pursuance of existing law. The town council set certain limits for the location through sections thirty-four (34), that is to say: That the road should proceed south of a certain line. The discretion thus left to petitioner's officers by the municipal authorities of Cicero has been exercised by the location of the road definitely upon a certain line, which line was then known to the officers of respondents, and large expenditures of money were made in the construction of a road upon the line so fixed before the act conferring jurisdiction upon this commission had been passed. Can it be said that the "new law" repealed the "former law" as to all these "acts done" and "rights accrued" and "claims arising under the former law" or that the new law can "in any way whatever affect any such act so done or rights accrued before such new law took effect?" It seems to the commission that to so hold would be a violation of the letter and spirit of the section of the statute above quoted.

To say petitioner had lawfully acquired a right-of-way and built a line over all the distance in question, except the hundred feet in width of respondents' right-of-way, but that because no pecuniary right had been acquired in that particular spot before the new law went into force, that, therefore, the whole question of the location of this road is an open one for the commission, would not, we think, be consonant either with the statute or with justice.

It is therefore ordered that petitioner have leave to cross with its track or tracks the track of respondents' road at grade at the point proposed by it, and designated in its petition; but in accordance with petitioner's stipulation before the commission, it is further ordered that petitioner shall put in and maintain at said crossing a system of interlocking signals and devices, with electric annunciators, and a Fontain crossing of the character proposed and presented by its counsel upon the hearing, the same to be subject to examination and approval by the consulting engineer of the commission.

Opinion filed Feb. 13, 1890.

THE CHICAGO, MADISON & NORTHERN RAILROAD CO.

V.

THE BELT RAILWAY CO. OF CHICAGO

AND

THE CHICAGO & WESTERN INDIANA RAILROAD CO.

Appearances—For petitioner, B. F. Ayer and E. H. Gary; for respondents, Osborn & Lynde.

OPINION ON PETITION FOR RE-HEARING.

While recognizing fully the force and ingenuity of the reasons urged by the learned counsel of respondents in their petition for rehearing, we are unable to assent to the conclusions arrived at. It is, in substance, insisted:

First—That the commission should have made a formal finding upon the question whether the proposed point is a “proper” place for a crossing, having due regard to the effect thereof upon travel and transportation upon respondents’ road; that said question was the only one properly before the commission for decision, and that this vital question has been ignored.

Secondly—That the commission is widely wrong in the opinion expressed to the effect, that petitioner had acquired such a right in the proposed line of location through sections thirty-three (33) and thirty-four (34), by virtue of “acts done” and expenditures made prior to the passage of the statute of 1889, as would carry with it the right to cross upon such line, and such a right as would, in the opinion of the commission, be saved to petitioner by section 4 of the act on construction of statutes.

Thirdly—That if such a right as would be saved out of the operation of the act of 1889 was so acquired by petitioner, then the only proper order to be made by the commission on that hypothesis would be one dismissing the petition for want of jurisdiction.

Such the commissioners understand to be the substantial grounds of the petition; and we remark:

1. That even if the only question before the commission were, as contended, whether the proposed place of crossing is under the circumstances “proper,” the consideration of its “propriety” (using that term in the broad sense it must take in such a connection), would involve all the matters discussed in the commission’s former opinion. All those matters would come in as reasons for the propriety of the crossing if the matter of vested legal rights were entirely waived. It might be “proper” to order a crossing in a place where the company seeking it could allege no legal right, but only a right to be made out by considerations of reason and equity based upon circumstances and addressed entirely to the discretion of the commission. But if such moral con-

siderations were reinforced by antecedently acquired legal rights in the company seeking the crossing, the "propriety" would certainly be only increased by that circumstance. Counsel are in error in saying the real question involved has not been decided. The statute does not require that reasons be given for the order made. The language is, "Said board shall give a decision, prescribing the place where and the manner in which said crossing shall be made." The naked ruling fixing place and manner would fully comply with the law. It is not incumbent on the commission, nor would it add the least force, formally to say, "We hold the proposed crossing will not unnecessarily impede or endanger travel or transportation, and is, under all the circumstances, a 'proper' crossing; therefore it is 'with due regard to the safety of life and property' decided, etc." Facts are more important than forms. The fact that a crossing is ordered is evidence the commission hold it under all circumstances proper, however unfortunate the reasons given may be. Grounds are stated, and reasons given largely out of deference to counsel who have been heard at length upon the case, and may care to know the views of the commission upon the subject discussed. They are in law no part of the decision proper. If a right decision is arrived at, the fact, if it be such, that no reason, or even a wrong reason is given, certainly does not invalidate the decision. We freely admit the policy of giving reasons at all is questionable. The party who succeeds is never much concerned about the court's mental operations; and reasons can rarely be cogent enough to convince or satisfy the party defeated.

2. We see no reason to modify what was before said touching the antecedently acquired rights of petitioner, or the expressed view that section 4 of the act on construction of statutes is broad enough to save those rights. We are aware the line where police power ends and vested property rights begin has ever been a battle line of litigation. But "vested rights," in the constitutional sense, were not meant to be discussed in the former opinion. We thought section 4, which, among other things, says no new law shall, "in any manner affect" any "act done" or any "right accrued" or any "claim arising" under the former law, was broad enough to save to petitioner its substantial property right in a line of road nearly completed when the new law was passed, and which had cost many thousands of dollars that would be a total loss if a crossing elsewhere were ordered. If, now, it were fully established that no such "saved" or "vested" rights as are legally conclusive had been shown by petitioner, the undisputed fact would still remain that a large expense (stated in the evidence at \$153,000.00) would be inflicted on petitioner if compelled to adopt the new route suggested. The further fact would remain that property values along the road as built, and near the crossing as proposed, have adjusted themselves on the basis of the present status. The further fact would exist that the town of Cicero had, for a consideration of \$10,000.00, exercised an undisputed power by ordinance in directing within fixed limits the location of petitioner's road through Cicero, and petitioner had acted under the ordinance. All this had taken place without the fault of petitioner or the public who are to be affected. These acts were done and rights, if any,

accrued, before any law existed under which the right to cross as proposed could be questioned. True, the right-of-way over the particular strip of ground belonging to respondents had not been acquired, but acquiring right-of-way and constructing a road are acts which can not take place simultaneously at all points. The work must begin somewhere and end somewhere. Acts done at other points are not deprived of force because the right to a particular 100 feet was not acquired before this law was passed. Petitioner was not bound to first acquire the right-of-way at that particular place in anticipation of some exercise of police power by the Legislature. As well say it could only build its road through Stephenson, Winnebago, Boone, DeKalb, Kane and DuPage counties at its peril, lest its right to enter Cook county might be revoked. We say, waiving the question of any conclusive legal right, all the above considerations and facts would still remain and be powerfully persuasive to the same conclusion at which the commission arrived, only reaching it by a different process of reasoning. The law under which we act says crossings must be made in such place and in such manner as will not "unnecessarily impede or endanger, etc." In a philosophical sense nothing is "necessary" except that which can not possibly be avoided—that which is inevitable. No certain place of crossing or manner of crossing could ever be regarded as "necessary," using the term in this rigid sense; for there would in every case be a possibility of changing it to avoid even the slightest danger or delay. The statute uses the term, however, in a different sense, and under the term "unnecessarily," we deem the commission authorized to consider all the facts and circumstances of each case, among which in the case at bar would certainly be the facts of petitioner's expenditures and other acts done and arrangements made before the law of 1889 was passed, the fact that the public have acquired interests to be injuriously affected by the proposed change, the fact that such change would cost petitioner an additional \$153,000.00, the fact that appliances are proposed to be used and maintained by petitioner at the proposed crossing which will, the commission believe, render the much exaggerated danger and delay to respondents' trains very small, and many other facts we shall not now stop to name. In view of all these matters we could say, independently of the question of legal right, that a crossing in the place proposed will not, all facts and circumstances duly considered, "unnecessarily impede or endanger the travel or transportation upon the railway crossed." The same result precisely would thus be reached by a slightly different process.

3. The question of jurisdiction does not trouble the commission in view of the fact that both parties have in effect invoked its action in the premises. On one question, and only one, both parties have been agreed from the first, namely: That a place for this crossing may be designated by this commission. The disagreement is entirely as to where that place shall be. Indeed, the jurisdiction which petitioner expressly invokes, could only be objected to by respondents upon grounds entirely fatal to their case. If the commission has not jurisdiction, then petitioner can cross as proposed. But let us see whether a legal right to cross, and a

right to ask the commission for an order be really so incompatible as counsel suppose. In these cases the commission sits as a court of very limited jurisdiction. If it assumes to act in any case of the subject matter of which it has no jurisdiction, its order will be of no more legal force than a sheet of blank paper. Notwithstanding any order made in such a case, all parties would still retain and could still assert, through the proper courts, any legal rights they had before. So that a wrong assumption of jurisdiction would in no case be a great matter. According to the statute the existence of just one fact gives the commission jurisdiction to proceed, and that is the fact that "objection be made." The full language is, "If in any case objection be made to the place or mode of crossing proposed by the company desiring the same, either party may apply to the Board of Railroad and Warehouse Commissioners, and it shall be their duty, etc." Can not "objection be made" as well as in a case where a legal right exists, as where the right asserted is only moral? There has certainly been "objection" enough made in the case at bar to bring it within the language of the statute, if taken literally, and we have seen no harm can come from so construing the statute. The counsel seem to suppose our expressed opinion that petitioner has a legal right is a judicial determination of the fact. It is not at all, but is simply a reason given for our order. If this commission had power to judicially determine that question in this proceeding, in a manner binding upon the parties, and could by some proper writ execute the order, it might with some consistency be said nothing further would be required. But we can not judicially determine the fact, and what was said in our opinion binds nobody. The order which it is conceded we have power to make, does not execute itself, but remains to be enforced through the courts. The learned counsel of respondents disagree with us as to the existence of any legal right in petitioner. We have much respect for their opinion while not assenting to it. For aught we know they might succeed, in a forum having jurisdiction, in securing a judgment upon that question contrary to our poorly expressed reasons. Then the parties would be, at the end of such litigation, just where they now are, and would still be under the necessity of calling on the commission for an order. In may be freely conceded that if petitioner could show no ground except a cold legal right without equity or justice—a case where all the equities were against the crossing proposed, and where we would not act but for the legal right shown—then the action suggested might be proper. The petition could perhaps properly in such a case be dismissed, and the parties relegated to their legal rights and judicial remedies. Such is not this case; and under all circumstances, and particularly in view of the strong equities made out by petitioner in addition to what we have deemed its legal rights, we must decline to grant a rehearing upon the grounds assigned.

Rehearing denied.

Opinion rendered March 20, 1890.

THE CHICAGO, MADISON & NORTHERN RAILROAD CO.

V.

THE CHICAGO & WESTERN INDIANA RAILROAD CO.

AND

THE PITTSBURG, FT. WAYNE & CHICAGO RAILWAY CO.

Appearances—For petitioner, Hon. B. F. Ayer, Hon. James Fentress, and Hon. E. H. Gary; for Chicago & Western Indiana Railroad Co., Osborn & Lynde; for Pittsburg, Ft. Wayne & Chicago Railway Co., Hon. Geo. Willard.

OPINION BY PHILLIPS, *Commissioner*.

Petitioner proposes to cross with its two main tracks the tracks of the respondent companies upon and near Stewart av. in the city of Chicago. It alleges that objection to the proposed crossing is made by respondents, and asks that this commission enter an order under the act of 1889, prescribing the place where and the manner in which said crossing shall be made. Such formal matters are alleged in the petition as bring the case within the statute.

The first point made relates to the jurisdiction of the commission, which is questioned upon the ground that respondents did not, prior to the exhibiting of the petition, make specific objection to the crossing as now proposed. The statute says: "If in any case objection be made to the place or mode of crossing proposed by the company desiring the same, either party may apply to the Board of Railroad and Warehouse Commissioners, etc." Whether objection to the precise proposition now contained in the petition was ever in terms made by respondents or not, there is no doubt at all that objection is now being made to it, and there is further no doubt that objection to any crossing, unguarded by interlocking devices, has all the time existed, whether such objection was ever formally expressed or not. Ordinarily when a defendant concedes the right claimed in a suit, he comes into court offering to perform all that is demanded, and saying he has ever been willing and thus makes a question as to plaintiff's right to costs. But there can be between these parties no question of costs, because the statute makes petitioner pay the costs, without regard to the fate of its petition. Were this otherwise, that is, were the costs to abide the result of the suit as in ordinary cases, and were respondents now disclaiming all objection to petitioner's proposition, offering to let the crossing be constructed as proposed, and asking a dismissal at petitioner's cost upon the ground that no objection had ever been made, the position would better commend itself to our ideas of consistency and justice. But to say, "we now object, but did not formally do so before suit, wherefore we ask that petitioner go out of

court," (only, it may be added, to come immediately back again with the same proposition now pending) would be, to say the least, taking rather "finer sights" than a due regard for substantial would justify.

The objection to the jurisdiction should, therefore, be overruled.

It is contended that the crossing as proposed by petitioner will, if constructed, occasion danger and delay and that the commission should, as the case stands, do one of two things, namely:

First—Either refuse the prayer of the petition and deny the crossing altogether; or,

Secondly—Allow the crossing only upon condition that a system of interlocking switches and signals be put in covering these crossings and such other points in the neighborhood as would necessarily be comprehended in a practical system. It is strenuously urged that this commission has power to do either of these things.

To these questions a few words will now be devoted.

And first, would it be proper to simply refuse the prayer of this petition, without making any affirmative order for a crossing? The statute says: "After full investigation, and with due regard to safety of life and property, said board shall give a decision prescribing the place where, and the manner in which said crossing shall be made." This is not equivalent to saying, if the proposed crossing is safe and proper the commission shall authorize it, and, if the contrary, refuse it. Some crossing in some place and mode, must, in any event, be provided for; and the decision must "prescribe" a crossing, not deny one. It need not necessarily be the same crossing prayed for in the petition, but may differ from that in place and manner, the word "manner" being used in the sense hereinafter assigned to it. We might vary the place of crossing; and we might compel a crossing over or under, or a crossing at a different angle, or a crossing constructed with different frogs or appliances from those proposed. We might, in short vary the proposition in any particular which refers to the manner of the location of the tracks of the one company across the tracks of the other company.

But, in this case there is no contention for a crossing in a different place or in a different mode from that proposed. The commission might, of its own motion, have the neighborhood of the crossing examined by expert engineers with a view to some variation of place or mode. The interests of respondents are, however, a guarantee of as high vigilance to find a better place and mode as would likely be exercised by any experts we could employ; and since no other place or mode claimed to be better is suggested by any of the parties interested, we may safely conclude a grade crossing in the place and manner proposed will occasion as little danger and delay as any we could select; and a decision must, on this point, be made accordingly.

It only remains, therefore, to determine whether the commission has power to compel the petitioner, or the parties generally concerned, to guard and operate this crossing (which, we have seen, must be authorized), by means of an interlocking system. Is an interlocking plant embraced in, or any part of, a "crossing" as the term is used in the act of 1889?

The question is a new one. In each of the cases arising under this law, previously decided by the commission, the petitioner stipulated before the commission to put in and maintain interlocking devices; and the order entered in each case only embodied the stipulation, without the commission having really considered the question of its power under the statute in the absence of agreement. The question is, therefore, as open as though nothing had been contained in the former decisions upon the subject.

The respondents in this case have signified their willingness to submit to this commission on their part the question of interlocking. We might, therefore, so far as they are concerned, if petitioner were also consenting, make an order covering the subject by way of arbitration, exercising not the power conferred by statute, but by the parties. But the petitioner is not consenting, and stands upon its legal rights.

It may be premised that an interlocking machine would be of no efficacy, unless provision were fully made for its maintenance and future operation. It would, therefore, be idle to order the construction of a plant, unless we have power to go further and order its maintenance, and its use at this crossing, and clearly, if one power exists, the other must exist also, or the law is futile.

It may be further premised that interlocking devices have more particular reference to the speed of travel than they do to safety. The Legislature of this State has for the safety of the public provided by general statute a certain measure of caution to be observed at all railway crossings, which statutory regulation is as follows:

"All trains running on any railroad in this State, when approaching a crossing with another railroad upon the same level * * * shall be brought to a full stop before reaching the same, and within eight hundred (800) feet therefrom, and the engineer or other person in charge of the engine attached to the train shall positively ascertain that the way is clear and that the train can safely resume its course before proceeding to pass the * * * crossing."

This precaution is enjoined under a penalty of \$200.00 against the engineer in charge of the train, and \$200.00 against the corporation. Lately, interlocking devices have been brought into use, by means of which the delay from these full stops at crossings may be avoided; and in 1887 the Legislature of this State passed a law recognizing these devices, under which law the operating companies are empowered to voluntarily interlock their crossings, and with the sanction and approval of this commission, run them without stopping. It is the desire for speed, far more than safety, which leads to interlocking. Indeed, it may be questioned whether the use of any device yet invented is more safe than to obey the statutory injunction and come to a full stop.

If, now, we examine more closely this statute of 1887 which did confessedly give to the commission certain power with reference to interlocking plants, we find that when the Legislature had this subject of interlocking before them and were professedly acting upon it, they gave to the Railway Commission no power to force interlocking upon any unwilling company. Under that act, the companies must, by

mutual agreement, set up, equip and arrange for the operation of the interlocking plant, leaving to the commission only the function of inspection and approval. The Legislature must have known there were many old crossings in Illinois where the danger is as great as at the new ones, and the delay vexatious to travelers. Yet they did not see fit to provide for any other or further interlocking plants than could be mutually agreed upon by the companies concerned. Had the Legislature intended to invest this commission with power to guard the public against danger and delay by means of interlocking devices, is it not reasonable to suppose they would have conferred that power clearly and unmistakably, and have done so in the act upon that particular subject, instead of leaving so important a power to be gathered incidentally, and purely by implication, from an act embracing a wholly different subject matter? And would they not, while about it, have made the power broad enough to include other crossings besides newly constructed ones, which other crossings are as much within the mischief as any; and their equipment could surely as well be paid for by old established companies as that of new crossings could by new and presumably weaker companies?

Nor is this all. This Act of 1887, while giving the commission power to approve crossing devices voluntarily put in, confers no power whatever to compel their continued use and maintenance. The companies which mutually agree to interlock a joint crossing, may mutually agree to abandon the system, and go back to the statutory method of coming to a full stop, and this commission could exercise no control over their free choice in that particular. It would be interesting to know how we would justify the exercise of a greater power under the Act of 1889, which says no word about interlocking, than we could exercise under the Act of 1887, which does professedly embody the legislative will upon that subject. And, as before observed, unless we can compel the maintenance and use of a plant, to order its construction, at a cost of many thousands of dollars, would be sheer idleness and folly.

Such being the state of the law when the Act of 1889 was passed, let us now look at that particular act, and see if it confers any such power as is here claimed, either expressly given, or necessarily implied.

The most careful reading of the statute reveals to me no power whatever over the subject of interlocking. The act meets only the case of how one company may cross "with its tracks the main lines of another railroad company." The confusion has arisen entirely through a misapprehension of what is included in the word "crossing." It is one thing for a company to cross the line of another "with its tracks," and another thing to cross the same point afterwards with its trains. The manner in which the tracks shall cross is one thing, and the manner in which trains may cross, or pass, and how they shall be operated, is quite another thing. When we speak of a railway crossing, we properly refer to the position of the tracks of two roads, and not to the passage of trains.

If the act is read with this distinction clearly in view, there seems to be no doubt as to its meaning. The title of the act, which may properly be referred to to aid in a doubtful construction, is in these

words: "An Act in relation to the crossing of one railway by another, and to prevent danger to life and property from grade crossings." Clearly, "the danger to life and property," which was to be prevented, was that arising "from grade crossings" as distinguished from those crossings which are not at grade; that is to say, crossings either over or under, and nothing further than this was in the mind of the man who drafted this title.

Passing a step further we find the general declaration that a company "desiring to cross with its tracks the main line of another * * * shall construct the crossing at such place and in such manner as will not necessarily impede or endanger the travel, etc." It does not say the crossing shall be so guarded after construction as to secure reasonable safety and expedition, but it shall be so "constructed" in the first instance as to secure that end. Unless the construction of a crossing can be said to include also both the construction and the operation of an interlocking plant, it is difficult to see what authority so far appears to do the acts contended for.

The same may be said of that clause of the statute which directs a decision, "prescribing a place where and the manner in which said crossing shall be made." Here is nothing affecting the manner in which a crossing shall be guarded or the manner in which trains shall be operated across it, and it is a "crossing" that is to be "prescribed" and "made" and not an interlocking plant.

Section 2 of the act provides that "the railroad company seeking the crossing shall in all cases bear the entire expense of"—what? An interlocking plant to regulate the operation of trains at the crossing? Not at all. Shall "bear the entire expense of the construction thereof." How does the commission from this derive the power to make petitioner bear another and much larger expense, not arising from the construction of the crossing proper, but having relation entirely to the manner of operating the trains of the companies?

It is agreed that an interlocking plant, to be effective at this point, must embrace certain crossing points on the Chicago & Alton and the Santa Fé tracks and right-of-way. Mr. Thomas, general manager of one of the respondents, testified on this point as follows:

"Q. At Stewart avenue could an interlocking system be put in that would be safe, that did not include all of the tracks at that point?"

"A. It should include all of them."

"Q. That would include what tracks?"

"A. The Madison & Northern, Fort Wayne & Chicago, Alton, and Western Indiana, and, I think, the interlocking of the lead track of the Santa Fé.

The Alton and Santa Fé Companies are not before us, and not parties to this proceeding. How, therefore, could we make an order affecting their property and controlling the operation of their trains, which would be binding upon them? It involves only an elementary principle to say that parties who have not had their day in court can not be bound by the judgment, even where the subject matter of the proceeding is

within the jurisdiction. But where jurisdiction of parties and subject matter are both wanting, the very suggestion of such an order becomes little short of preposterous.

To further illustrate the want of power in the premises, suppose the respondent companies were consenting to nothing in this case, did not even come before us with any suggestion, as would be their undoubted right, and we, upon looking over the crossing proposed, should believe it improper unless protected by interlocking. Could we, in such a case, make an order which would contemplate the taking, or use, of respondents' grounds, by the location on them of pipes, boxes, wires, signals and perhaps a tower house, some of the appliances extending thousands of feet upon their lands, the use of which being imperatively commanded, would materially and permanently affect the operation of their trains, and all without their consent? Certainly we would have no such power. And it does not even tend to answer the difficulty to say the order would in that case be for the benefit of respondents. Parties have some right to judge for themselves what is beneficial to their property; and those who would take that delicate function from them must show undoubted legal authority.

That this subject is one within the power of constitutional police regulation by the Legislature is not questioned; but the Legislature must act before the commission can act. The case before us can not be decided upon sentimental notions as to what the law ought to be, but must be met upon the plain issue of what the law in fact is. Nothing in the Act of 1887 or of 1889 empowers this commission to compel interlocking, in the absence of the mutual agreement of the parties, nor can any such power be said with reason to be implied as being necessarily involved in the carrying out of the objects of either of those statutes. The precautions for public safety which are put within the discretion of this commission by the Act of 1889 are such and only such as arise out of a choice of the different ways in which the crossings of railway tracks proper may be constructed, the most obvious distinction being between those which are built on a level and those which are separated, one passing over the other. The question why a larger power has not been conferred may properly be addressed to the Legislature.

It is my opinion an order should be entered prescribing a crossing in the place and manner designated in the petition.

Crim, Commissioner—I concur in the conclusions reached in the foregoing opinion.

Wheeler, Chairman—Dissenting.

I present my views in the case under advisement with great reluctance, but, being unable to reconcile the opinion of a majority of the commission with the facts and law in the case as I understand them, I am led to dissent from certain of their findings for the following reasons:

My interpretation of the statute under which this hearing is held gives it a broader scope, and a more extended jurisdiction to the commission than my associates allow, and, I may add, broader and more extended than the learned counsel for the parties to the controversy admit.

The right of the petitioning company to cross the tracks of the respondent companies at some point is conceded, and no other point being suggested, it may be assumed that the place proposed is the most feasible and the best that can be selected. Therefore, "the place where said crossing shall be made" may be considered established. Thus far the commission seem to be of one opinion.

The vital point in the controversy, and upon which our views differ, is found in "the manner in which said crossing shall be made." What does the word "manner" as used in the statute mean? How far does the question of "manner" extend? Must we confine it to that portion of the respondent companies' "main lines" actually enclosed by the petitioning company's tracks?

The statute under which this case is brought is somewhat obscure, inasmuch as it does not specifically define the meaning of the term, and upon the conclusion reached depends the extent of the jurisdiction of the commission. The cost of constructing the crossing is provided for in the act; aside from that, the only reservation is found in the question of "damage," which, with the extent of jurisdiction, covers the entire matter in controversy.

The enacting clause of the statute clearly indicates that the intent of its framers was to "prevent danger to life and property from grade crossings," and in its first section it is expressly stipulated that the commission shall have "due regard to safety of life and property," and "shall prescribe the manner in which said crossing shall be made." Can there be any doubt about the intention of the law-making power? The question of safety is made paramount—the first to be considered—one that must not be lost sight of; therefore, I conclude that a reasonable construction of this clause places all matters pertaining to the question of safety within the jurisdiction of the commission, including the side tracks, switches, turn-outs, etc., of all companies adjacent to and affected by the crossing. All of these, in my opinion, are covered by the statute and must be subject to the restrictions contemplated by the law.

Assuming this view to be correct, do we not fail in our duty if we ignore the plain intent of the law and allow a crossing in a locality teeming with human life without such safety appliances as will reduce the element of danger to a minimum?

But, it is argued, safety appliances concern only the operation of railroads, a question not referred to this commission by the act, therefore it is outside of and beyond our jurisdiction. In answer, permit me to say that while I claim no right to impose conditions on, or in any manner interfere with, any crossing constructed or located prior to the time the present act went into effect, i. e., July 1, 1889, I am clearly of the opinion that we not only have the right, but it is our solemn duty to require proper safeguards for public protection in all cases arising subsequent to that date, failing in which, the community will hold us responsible for any disaster that may occur.

Again, we are told that interests other than those of the parties to this case will be disturbed by the construction and operation of safety appliances, interests not submitted to us for adjudication, and any

decision of this commission affecting such interests will not be recognized as binding by the parties thereto. In reply, it may be said that, while all parties that may be directly or indirectly interested in the decision of the commission have an undoubted right to a hearing, our authority to act in the premises is not abrogated by their failure to appear, and our duty to render a decision covering the whole question remains whether they do or do not appear.

How far the question of damages extends is, perhaps, more difficult to determine. It may not, however, be unreasonable to claim that it covers only such property as is rendered wholly or partially useless by the tracks of the petitioning company and the necessary safety appliances. In my opinion it does not include the cost of such appliances, their operation or maintenance, these being an expense, not a damage. My conclusions therefore are:

First—The law as enacted gives the commission full jurisdiction over all questions pertaining to crossings at grade, cost of crossing and damage excepted.

Second—The commission has the right to name the place of crossing, and the right to prescribe the manner as well.

Third—In prescribing the manner, the commission has the power to require such appliances as will insure a reasonable degree of safety to the public.

Fourth—The cost of constructing, operating and maintaining the necessary safety appliances does not fall under the question of damages.

Fifth—The commission has no right to grant the request of the petitioning company without requiring such safety appliances as will render the crossing practically safe.

In the matter of the above petition it is decided and ordered by the commission that petitioner have leave to cross with its tracks the main lines and tracks of the respondent companies at the place, and in the manner designated in its petition, and as shown upon the plat to said petition.

Opinion filed April 17, 1890.

ST. LOUIS & EASTERN RAILWAY CO.,

v.

TOLEDO, ST. LOUIS & KANSAS CITY RAILROAD CO.

OPINION BY PHILLIPS; *Commissioner.*

This is an application of the St. Louis & Eastern Railway Company for leave to cross with its proposed track the track of the Toledo, St. Louis & Kansas City Railroad Company at a point about three-quarters of a mile east of the station called Peters, in Madison county, Ill. Respondent resists, alleging that a crossing at the point proposed by petitioner will "unnecessarily impede and endanger the travel and transportation" upon respondent's road.

Respondent, however, offers to allow a crossing at the point proposed, provided petitioner will, at its own expense, set up and maintain interlocking at such crossing; or it offers to permit petitioner to cross without interlocking at a point a little over a half mile further west than the place proposed. Petitioner declines both these offers and insists upon the crossing proposed without interlocking.

Respondent alleges in its answer "that the proposed crossing is at the foot of a working grade of from thirty-five to forty feet to the mile; that result of such crossing will be to compel all trains upon the Toledo, St. Louis & Kansas City Railroad to stop at the foot of such grade, and thereby lose the momentum necessary to carry trains of ordinary size over such grade;" that a crossing at this point will necessitate diminishing the train load on respondent's road by several cars, thus increasing the expense of operation, as well as delaying and interfering with traffic; and that its management has already decided upon a change of grade at the proposed point of crossing, rendered necessary in the economical operation of its road, which road, it is alleged, is in the course of being reconstructed, this grade being among the last to be changed.

The evidence on which we are asked by petitioner to order this crossing is meagre and unsatisfactory. Two witnesses testified for complainant, stating in terms (without objection) that a crossing at the point proposed "would not unnecessarily impede or endanger the travel and transportation upon respondent's road," and this general conclusion was, in a manner, supported by further expert theoretical testimony given by the same witnesses.

The testimony does not inform us as to the actual state of traffic on respondent's road, how many and what kind and weight of trains it runs, or any other of the many specific facts which might readily have been made the subject of observation and have been put before the commission. Neither did any witness who had actual experience in handling engines, or in hauling trains over grades of this kind, testify before us. We confess to some prejudice in favor of the notion that the best way to prove how the running of freight trains is affected by the grade at the point of proposed crossing, and what freight locomotives can haul there, and what speed and "momentum" must be acquired at

that point to insure the ascent of the grade eastward, would be to show what is actually done by the freight trains that daily pass this point and ascend this grade. No evidence on this line was offered.

The expert testimony offered by complainant was controverted by the chief engineer of respondent, whose testimony substantially and very plausibly supports the objections to this crossing stated in the answer of respondent.

The petitioner held the burden of proof and ought to have made clear, by a preponderance of the evidence, the fact that this crossing will not unnecessarily impede and endanger respondent's traffic. This could not be done by witnesses swearing to that conclusion in terms as they did. The general conclusion as to the propriety of the crossing is for the commission, not for witnesses. Actual facts should have been placed before us on which we could judge.

The railroad first upon the ground gains important rights by the fact of its presence. The use of its line ought not to be lightly interfered with. It was undoubtedly in part the object of the Act of 1889, while insuring safety to persons and property transported, to protect established companies in the enjoyment of their rights. One way of arriving at the propriety of a proposed crossing would be to consider whether the line to be crossed would have been built as it is as respects grades, curves, etc., had those building it known a crossing was to be made in the place proposed. Such a test might not be decisive, but is worthy of consideration in every case.

The Act of 1889 took away the arbitrary power of new roads to locate crossings at will; and its effect is to put upon them the burden of showing that the crossing will not "unnecessarily" impede and endanger the travel and transportation upon the road crossed. They should point the commission a clear way to order the crossing desired with proper regard to existing rights and uses. This we can not say has been done in the case before us. Giving due force to the testimony, the question remains in serious doubt.

In this case it appears from an unchallenged estimate that the increased expense of placing the crossing at the point a half mile further west, as contended for by respondent, would be only \$8,594.00; unless petitioner should be obliged to purchase nine acres of ground between its right-of-way and the creek on the south, in which case the cost would be increased to \$10,844.00, estimating this land at \$250.00 per acre, which is, it seems to the commission, a very liberal if not extravagant allowance. Thus, we see, the change contended for by respondent does not involve a large outlay by petitioner; and we are unwilling to permanently obstruct or cripple an established line, or to take a serious chance of doing so, where the expenditure of a few thousand dollars will remove all objections.

The petitioning company acquired no equities in the proposed crossing by prematurely grading its road to the point. The correspondence submitted shows the officers of respondent never, expressly or by any fair implication, consented to the crossing unless petitioner would interlock it in the manner stated in the form of contract submitted by them. This

is not a case like that of the Chicago, Madison & Northern, where the right-of-way was acquired and 80 per cent of the work done before this crossing law was passed. If petitioner, with the law before it, and without either an order of the commission or the consent of respondent, chose to grade its road for a crossing, it did so on its own responsibility, and at its own peril.

Under the evidence as it stands before us, we are unable to find that a crossing in the place proposed will not, in the language of the act, "unnecessarily impede or endanger the travel or transportation upon the railway crossed."

It is therefore decided and ordered, that the petitioner, the St. Louis & Eastern Railway Company, have leave, and it is hereby empowered, to cross with its track the main line and track of the Toledo, St. Louis and Kansas City Railroad Company at grade at a point in the northeast quarter of the northwest quarter of section 4, town 3 north, range 8 west of the Third Principal Meridian, 2,940 feet west of the point named for said crossing in the petition filed in this case.

The point of crossing hereby established is marked by the letter "B" upon the plat submitted by petitioner and now with the files in this cause, to which plat reference is hereby made for greater certainty.

It is ordered that petitioner pay all costs and expenses of the commission incurred under its petition.

Springfield, Ill., Jan. 7, 1891.

THE JACKSONVILLE, LOUISVILLE & ST. LOUIS RAILWAY CO.,

v.

THE WABASH RAILWAY CO.

Appearances—For petitioner, I. L. Morrison; for respondents, George B. Burnett.

By PHILLIPS, *Chairman*.

This is a petition by the Jacksonville, Louisville & St. Louis Railway Company for leave to cross with its track the main track of the respondent, just north of the city of Litchfield, in Montgomery county. A crossing at the point proposed is resisted by respondent upon the ground:

1. That petitioner does not show such ownership or interest in the St. Louis & Chicago Railway, which it operates, as entitles it to ask for the crossing; that its only interest is held under a contract with a receiver which may terminate at any time, and will surely terminate when the receiver's functions are performed and he is discharged.

2. That the statute of 1889, under which the proceeding is begun, was intended to meet the case of new lines of road only, and that a crossing sought by an old company in merely changing the location of its lines is not within the purview of the statute.

3. That petitioner shows no public necessity demanding the crossing, but merely seeks to secure its own convenience.

Such, in substance, is our understanding of the points made by respondent.

After carefully considering the evidence and suggestions of counsel, we have arrived at the conclusion that the order for the crossing should be granted. In doing this, we do not judicially determine the questions that have been made by respondent. Not being a court for that purpose, we would be unable to make any adjudication of the questions presented which would be binding upon the parties. The order which we grant in the case is merely preliminary, and determines nothing except the propriety of the crossing as affecting the safety and convenience of the public. In other words, the power we exercise as a commission is one of police regulation only. We do not determine constitutional rights, or construe statutes or laws affecting the building of railroads in general. All the questions that are here sought to be made, can be made in a court competent to decide them, when the petitioning company goes into court to condemn its right-of-way across the right-of-way of respondent. There it can be determined judicially whether the petitioner has such an interest as entitles it to seek this crossing, and it can there also be determined whether, in case it is found to have such an interest, it is otherwise in an eligible position, which involves the other points made. As a mere matter of police regulation, we are not able to see that there is such impropriety in this crossing as would justify its denial, particularly in view of the fact that the petitioning company proposes to interlock the new crossing with suitable appliances, and maintain and operate the interlocking plant without expense to respondent. All the Jacksonville, Louisville & St. Louis traffic that would pass this proposed crossing now passes over respondent's line at another point where there is no interlocking, and where trains consequently must stop.

It is therefore ordered that the petitioner, the Jacksonville, Louisville & St. Louis Railway Company, have leave to cross with its track the track of the respondent company at the point designated in its petition, to-wit: Nine thousand seven hundred and ten (9,710) feet north of the center of the present crossing of petitioners' track and the track of respondent south of the city of Litchfield, Montgomery county, Ill., upon condition, however, that the said Jacksonville, Louisville & St. Louis Railway Company will, at its own expenses, construct, place in position, maintain and operate at said crossing an interlocking machine such as may be designated and approved by this commission.

It is further ordered that the petitioning company pay all costs and expenses of this proceeding.

Adopted by the commission Oct. 23, 1891.

THE CHICAGO & ALTON RAILROAD CO.

v.

THE ILLINOIS CENTRAL RAILROAD CO.

AND

THE WABASH RAILROAD CO.

Appearances—For Chicago & Alton Railroad Co., William Brown; for Illinois Central Railroad Co., John Mayo Palmer; for Wabash Railroad Co., B. A. Winston.

By PHILLIPS, *Chairman*.

This is a petition, filed under the interlocking act of 1891, by the Chicago & Alton Railroad Company. The Wabash Railroad Company and the Illinois Central Railroad Company are made defendants in the petition. The prayer of the petition is that this commission will order the crossing of the main tracks of the three companies named, at what is called Paducah Junction, near Pontiac, in the county of Livingston, to be interlocked.

The companies all agree that the crossing in question is a proper one for interlocking under the statute, and that the commission may designate the device to be used. They, however, widely disagree as to the basis on which the cost of the interlocking and the expense of its future maintenance and operation shall be apportioned among the companies.

The tracks of the several companies at this place are so located as to form a triangle, each road crossing the other two, thus forming three distinct main track crossings, ranging from 600 to 1,000 feet apart. The Alton tracks extend from northeast to southwest; the Wabash track from northwest to southeast, and the Central track from southwest to northeast. The Alton road is the senior of the three, having been built long before the others. The Wabash is next in point of time, and the Central was built last. The traffic over the Alton at this point is heavy, and it has here a double track. The Wabash runs but three regular trains a day each way over this crossing. The Central also runs three daily trains each way. Upon the south side of the Central track, about half way between the crossing of the Alton and the Wabash, is the Pontiac station building, at which all Central trains stop. There is also upon the line of the Central, a short distance east of its crossing with the Wabash, a coal mine, at which all Central trains stop for coal. The Alton and Wabash trains make no regular stops at this place, except those made for the crossings.

We confess the question of apportioning the cost and expense of this interlocking among the companies has given us much trouble. This and the other cases now under consideration, are the first that have arisen under the statute. It has been insisted that the commission

should at the outset lay down some general principle, in accordance with which the cost and expenses of interlocking are to be apportioned under this act, thus making this first batch of cases decisive of all that may hereafter arise. While we recognize that such a method would greatly simplify the subject and save much labor, we see many difficulties in the way of adopting any of the general rules of determination that have been proposed.

It is contended by the Alton company that seniority should solve the whole question. It is urged that the road first upon the ground, which once had the right-of-way unobstructed by the crossing, should pay no cost or expense, and that the junior road, whose track has been built across that of the senior, thus occasioning the necessity for stopping trains, and the danger incident to the crossing, should be compelled to bear the whole burden of protecting the crossing by an interlocking device. It is said that in making contracts for crossings in the present day it is customary to require the junior company to pay all costs and expenses, including the wages of gateman or flagman when needed. It is further said that only such matters as were in contemplation when condemnation of right-of-way across other tracks took place, can be deemed to have been settled by the judgment of the court, and that in the case of these crossings, made before interlocking came into use, the burden of equipping with the new appliance should be visited upon the junior company in the same manner that it is customary at the present time to allot expenses by contract.

It is insisted the principle of seniority contended for is recognized in the statute under which this proceeding is had. That statute provides that "in case one railroad company shall hereafter seek to cross at grade with its track or tracks the track or tracks of another railroad company, and the Railroad and Warehouse Commission shall determine that interlocking or other safety appliances shall be put in, the railway company seeking to cross at grade shall be compelled to pay all the cost of such appliances, together with all the expense of putting them in and the future maintenance thereof." It is argued, that since, by the terms of this statute, roads causing new crossings are to bear the whole burden, an application of the same principle would require that crossings already in existence should be interlocked upon the same principle all expenses being cast upon the last comer.

The contention of both the Central and the Wabash companies is that first cost of machine should be borne equally, but that the cost of subsequent operation, which is far the most important item, should be apportioned among the companies according to the number of trains which pass over the crossing on each line. This, it is contended, would be equitable for the reason that it would assess the cost and expense upon the basis of benefits. Every stopping of a train entails expense in wear and tear of machinery, in consumption of fuel, and in delay; and from this it is argued that the benefit received by a company is in direct proportion to the number of trains run by that company, and which are relieved, by the interlocking, from the statutory stop. Hence it is said maintenance and operation should be paid for in proportion to the number of trains run.

Another basis which has been propounded to us in another case now before us, and which may be considered here, is that each company should pay both of original cost and expense of operation in proportion to the number of main tracks which it has in use at the crossing. The reasons for such a division have not been very elaborately stated before us. In the particular case where the theory was advanced, we have thought the method did not work any injustice, and have accordingly used it for that case only. (See opinion in *C. & A. R. R. Co. v. A., T. & S. Fé R. R. Co.*, petition for protecting crossing at Corwith.)

In addition to the above methods, we may here name a fourth, which comes to the notice of the commission by reason of its having been actually used by certain companies in the case of a very complicated crossing at Stewart av. in Chicago, now being interlocked by agreement of parties. The fourth method is to assess upon each company the cost of that portion of the device which pertains to its own particular tracks and switches. That is to say, each company pays for the construction of its own derails and signals, and for the pipes, attachments, wires, etc., by which the same are operated. Then the cost of the operating machine, tower house and other general expenses which pertain to all the roads alike, including wages of men, are assessed among the companies on the basis of levers, each road paying that portion of the whole expense which the number of levers required to work its own derails and signals bears to the total number of levers used to operate the entire plant. While none of the counsel in the present case have propounded this latter theory, the commission, in fact, took it into consideration in connection with all these cases, knowing it had been adopted in practice by several of the best railroad men in the State.

The result of our deliberations is that we find ourselves unable to adopt any one of the rules stated as an unyielding principle of determination for all cases. Some force may be allowed to each of them; but any of them, if universally applied, would in many cases work injustice.

Take first the principle of seniority; and here we remark that where condemnation proceedings have been had at the time of establishing the crossing, the damages allowed would, in legal contemplation, cover all injury to the line crossed which could be regarded as proper legal damages. The use declared for across the right-of-way of the old company would, it seems to us, be such as would call for the allowance of all damages that could in any event arise. We can think of no damage obtainable by condemnation in any case that would not arise by the mere fact of building the one track across the other. It is held in Illinois that damages which may accrue from collisions and accidents at crossings are too remote and speculative to form a subject of recovery in condemnation. (*P. & P. U. Ry. Co. v. P. & F. Ry. Co.*, 105 Ill., 110.) So likewise it is held that damages which arise from the statutory regulation for the stopping of trains at crossings, is not such as the law will recognize (*C. & A. R. R. Co. v. J. L. & A. Ry. Co.*, 105 Ill., 388); because the statute is said to be a mere police regulation, which may be changed at any time; and no company is entitled to compensation for obeying the law.

Under the authority of these cases it may be questioned whether in condemnation proceedings the cost of interlocking could be considered any more than could the question of the stopping of trains. This commission now proceeds under the act of 1891, which is purely a police regulation. It is the public interest that is to be subserved in these cases, by lessening the danger to life and property and by expediting travel. Interlocking is a burden cast by the police power of the State upon the companies solely for the public good, not for the pecuniary benefit of the companies themselves. If its cost would not be in any case within the purview of condemnation proceedings, it can hardly be contended that priority affects the equities between the companies on the ground stated that interlocking appliances were not in use when the condemnation was had.

Nor does the contention, in our judgment, derive any additional force from the fact that in the case of the Paducah crossing the lines of the Wabash and the Central crossed by a verbal license from the Alton company without any damage having been paid or any burdens imposed. The Alton could have required condemnation and the assessment of damages, if it had seen fit. It did not do this, and we are unable to see that the status of the companies before us is now materially different on that account. Interlocking, it is true, has been recently introduced; a legal method of compelling its use is now for the first time prescribed by law. This added police regulation is in accordance with the modern tendency alike shown by legislatures and railroad managers, to secure greater safety and speed, and generally better railroad practice.

The seniority theory would be wholly impracticable in cities where tracks are concentrated, and where a single interlocking plant may cost from \$50,000.00 to \$100,000.00. Here to make the youngest, and presumably the weakest road, pay the whole expense, would be little short of ruinous.

For the reasons given, seniority can not be taken as a basis of determination, discarding other considerations. There may arise cases where it will constitute an element proper to be considered; but, speaking generally, if the commission finds two railroads in operation upon the ground, without special contract burdens as between themselves, they must be dealt with on a basis of practical equality.

In the proposition to make each company pay in proportion to the number of trains passing the crossing, we see somewhat more equity than we have found in the rule of seniority. But will the train basis do as an infallible principle of determination for all cases? Take the case of a great trunk line doing a heavy traffic, which has been recently crossed by some new line which does very little business; the one may run a hundred trains per day and the other not more than two. Would not the train basis work a very palpable injustice in such a case? The fact that the junior road has crossed the older road creates the entire necessity for interlocking, and for that necessity the new road is certainly as much responsible as the old one; more so, if its junior position is to have weight. Yet, if the train basis is used, the new road will be practically exempt from operating expense. The fact that one road does a

light business, does not decrease the cost of the machine to be used, nor the expense of its maintenance and operation. Under this theory of apportioning expenses, if speculators build a new and useless line of road for speculative purposes, as has been too much done in this State, the very fact that the new line is useless and does no business, would enable its projectors to compel other companies, which do a substantial service to the public, to maintain and operate interlocking at all the crossings. This would certainly be unjust. The presence of the crossing tracks renders interlocking necessary, and the public benefit arising from increased safety to life and property and greater expedition in travel is the principal fact to be regarded, not the pecuniary benefit to the companies.

Besides, a train basis for apportioning expenses would constantly fluctuate. The time cards of the companies would furnish no adequate basis for such an apportionment, because many roads run more wild trains than regular ones, and any road may run twice as many trains in one month as it runs in the next. Under the train basis the question would constantly be open for readjustment, and the uncertain situation in which the order would be left would invite constant wrangling between the companies as to the proportions to be paid.

Under all the circumstances we can not, therefore, adopt the train basis as a decisive principle to be applied in all cases.

We come now to the proposition to apportion expenses of operation upon the number of main tracks in use by each company at the point of crossing. This, it appears to us, would in many cases be inequitable. It seems to the commission only a clumsy way of apportioning expenses upon the volume of traffic, and as such the train basis would be superior to it; and "wheelage" would still better apply the principle underlying this method. Cases no doubt exist where the road with a double track at the crossing point does less actual business than another with a single track. The actual use of a machine, and the activity of those operating it, might be more frequently called forth by a single track road than by a double one. Again, a road might have a thousand miles of double track elsewhere, and, at the particular point of crossing, if in some city or other crowded place, might have a single track.

We can understand that if the tracks, sidings and switches of one company be so arranged that a very large proportion of the cost of the original construction is occasioned thereby, it might be equitable to consider that circumstance in apportioning the original cost of the machine, and also the cost of repairs; but the same reason would not exist in many cases for allowing that circumstance to control the expense of operating. The wages of operators would be the same even though in the course of a day they move a few more levers for one of the companies than for the other. Then, too, the actual working of the machine to accommodate a company's traffic might not bear a direct ratio to the number of protected points on such company's right-of-way.

If we should apply here the principle of seniority, the Alton would pay nothing. The Wabash could also plead its seniority over the Central, and, carrying the principle to its logical outcome, we should have the

Central paying the whole cost and expense of the machine and its operation. It is fair to consider also in this connection that the Central company can, by interlocking, be saved but one stop for its trains, which is that now made by the trains bound eastward before crossing the Alton tracks. All other statutory stops are made by stopping for the station and at coal chutes. Thus the company which gets the least benefit would pay the whole expense. If we should adopt the train basis for apportioning costs and expenses, we should have the senior road, for which entire exemption is claimed under the opposing theory, paying nearly the whole cost of operation and maintenance. If we should adopt the principle of apportioning according to the number of main tracks, then the Alton would pay one-half of the maintenance and operation and each of the others one-fourth. If we should apportion first cost according to the number of derails, signals, and their connections actually located on each line, and other expenses according to levers in the tower, as has been done in the crossing agreement for Stewart av. above referred to, we should then have here again the anomaly of the Central company, which derives the least benefit from this machine, paying the largest share both of the cost of construction and of the expense of operation; for according to the plan prepared for this crossing, the Central road has a total of thirteen levers, while the Alton has but twelve, and the Wabash eight. Hence, on this basis, the Central would pay thirteen thirty-thirds, the Alton twelve thirty-thirds, and the Wabash eight thirty-thirds.

Turn which way we may, difficulties are encountered in attempting to apply any one of the principles we have thus had under consideration. At the same time, we admit that all of these might properly be considered in cases where they have special weight.

If we were compelled to adopt a rule to be followed unswervingly in all cases—a thing we should not regard as good policy or as tending to justice—we are free to say, after very careful deliberation, that rule would be to apportion all cost and expense among the several companies whose tracks are involved, equally, share and share alike. But since this would, in exceptional cases, work hardships, as is notably the case at the Corwith crossing now pending before us, we are unwilling to adopt the rule of equality as an inflexible and decisive one to be applied in all cases. We are, however, convinced that it would be fair to assume at the outset of every case that both or all the companies concerned are equal in their liability to bear this new burden cast upon them by the State for the public good in the exercise of the police power. If highly exceptional circumstances exist, which are claimed to be sufficient to take any case out of the principle of equality, it should be for the company claiming the exemption to show these circumstances; but neither benefits nor hardships to companies can receive as large a measure of consideration as the public interest and the public good, which latter it is the great function of this commission to subserve, and the sole object of this statute to promote.

In the case now under consideration, we have concluded the facts do not warrant us in departing from the principle of equal payment by the companies.

An order will therefore be entered by the Secretary in this proceeding, providing that the crossing described in the petition, and also the crossing of the Wabash and Central tracks near the other two, be all interlocked by the three companies concerned, by means of a single interlocking system, and that each of said three companies pay one-third of the original cost of the device used, and one-third of the expense of the future maintenance and operation of the same.

Order entered Dec. 10, 1891.

THE CHICAGO, PEORIA & ST. LOUIS RAILWAY CO.

THE CHICAGO & ALTON RAILROAD CO.

THE WABASH RAILROAD CO.

Appearances—For Chicago, Peoria & St. Louis Railway Co., I. L. Morrison; for Chicago & Alton Railroad Co., William Brown; for Wabash Railroad Co., B. A. Winston.

By PHILLIPS, *Chairman*.

This is a citation issued by the Railroad and Warehouse Commission to each of the three companies named in the title, under the act approved June 2, 1891, commanding said companies to show cause why the crossing formed by their respective main tracks at Jacksonville Junction, Morgan county, Ill., should not be protected by interlocking or other proper appliances. The counsel of the respective companies appeared before the commission Nov. 4, 1891, and agreed that the crossing might, by order of the commission, be interlocked, and that the commission might fix in the order the kind of device to be used. They further agree that the original cost of the appliance to be used might be assessed upon the companies equally, one-third to each.

These mutual agreements of the companies relieve the commission from the decision of all questions except that as to the apportionment of the expense of future maintenance and operation. Upon this latter question the Chicago & Alton and the Chicago, Peoria & St. Louis companies, through their respective counsel, agree that the order of the commission may apportion the expense of operation and maintenance in the same ratio as that of the original cost, namely: one-third to each company.

On this point, the counsel for the Wabash Company contends for what would, in the present case, be a slightly different division of the expense of operation. He contends this expense should be distributed in proportion to the number of trains run over the roads respectively. Since, however, it appears from the time cards of these roads on file that the number of regular trains of the Alton and Wabash companies are equal, nineteen each daily, and those of the Chicago, Peoria & St. Louis within one of that number, being eighteen daily, there seems no reason to discuss the feasibility or equity of the train basis for dividing expenses in connection with this citation. The Chicago, Peoria &

St. Louis is the company which would profit here by the adoption of the train basis for operating expenses, and that company consents to pay one-third. A letter of Mr. Hayes, general manager of the Wabash, now on file in the case, concedes the propriety in this case on his own basis of assessing the operating expense one-third to each road.

The companies are, therefore, practically at an agreement on the division of expenses for this crossing, though they disagree widely as to what principle should be applied by the commission generally in such cases. The agreements made contemplate only this particular crossing, and are in the nature of a compromise. This case can not, therefore, be fairly urged as a precedent, nor can the agreements made be held to estop these companies, or any of them, from maintaining in other cases, principles which would lead to a different result. We have discussed the different theories held by these companies as to what is a proper basis of distribution of expense in connection with another case now before us, wherein such diverse theories have been insisted upon.

The payment of one-third of all cost and expense by each company at this place, while finding a sufficient basis in the mutual agreements of the parties, seems to the commission, at the same time, to be fair, reasonable and just under all the circumstances of the case.

An order will therefore be entered by the secretary for the protection of said crossing by interlocking, and providing that the original cost and the expense of future maintenance and operation of said interlocking plant shall be paid for equally by the three interested companies.

Order entered Dec. 10, 1891.

THE CHICAGO & ALTON RAILROAD CO.

V.

THE CHICAGO & WESTERN INDIANA RAILROAD CO.,

THE BELT RAILWAY CO. OF CHICAGO, LESSEE,

AND

THE ATCHISON, TOPEKA & SANTA FE RAILROAD CO.

Appearances—For Chicago & Western Indiana Railroad Co., The Belt Railway of Chicago, Lessee, C. M. Osborne, General Solicitor, and C. Dougherty, Chief Engineer; for Chicago & Alton Railroad Co., Wm. Brown, General Solicitor; for Atchison, Topeka & Santa Fé Railroad Co., A. D. Wheeler, Attorney.

BY PHILLIPS, *Chairman.*

Crossing at Hawthorne.

This is a petition by the Chicago & Alton Railroad Company to interlock the crossing of its tracks with the tracks of the Chicago & Western Indiana Railroad Company, operated under lease by the Belt Railway Company of Chicago.

The Belt and Western Indiana Companies are made parties defendant in the petition.

The crossing sought to be interlocked is in the city of Chicago. The tracks of the Alton at that point of crossing run parallel with the Illinois & Michigan Canal on the south side. Parallel with the canal upon the other side run the tracks of the Atchison, Topeka & Santa Fé Railroad Company. These parallel lines of the road—the Alton and Atchison—are about five hundred feet apart, and they are both crossed by the tracks of the Western Indiana Company. Deeming it impracticable to interlock one of these crossings without including the other in the same system; the commission, after the petition in this case was filed, of its own motion, issued a citation directed to the Atchison Company, and also to the Western Indiana and Belt Companies, commanding them to show cause why they should not interlock the crossing of their tracks upon the other side of the canal. This citation, has by agreement of all the parties, been consolidated with the petition in this case, so that we have the whole question of interlocking both crossings now before us.

We have discussed in the case of the Paducah Junction crossing the different theories advanced for the apportionment of costs of construction and expense of maintenance and operation, and it is unnecessary to repeat here what has been there said.

The Western Indiana Company here crosses with its tracks two other roads. It has a double track; the Alton crossed by it has also a double track, and the Atchison is now constructing a double track, and consents that the case may be considered upon the basis of its having the same completed. It is expected, we believe, that the second track of the Atchison Company will be completed by the time this interlocking is ready for use.

There are a switch and signal which add two levers in the tower, and are located between the tracks of the Alton and the Atchison, upon one of the Western Indiana tracks. These appliances are not essential to the interlocking of the crossing, but are put in, we learn from the consulting engineer, at the request of the Western Indiana and Belt Companies for their exclusive accommodation. So far as the other companies are concerned, the crossings could be perfectly interlocked without these appliances. We therefore think it not unjust to charge the extra cost of these particular appliances to the Western Indiana and Belt Companies. Without these, the number of switches, signals and levers would be exactly equal upon all these lines. Apportioning first cost upon levers, which under the circumstances we think would be just, the Chicago and Western Indiana and the Belt Companies would pay four-tenths of the first cost, the Chicago & Alton three-tenths, and the Atchison three-tenths. We think such apportionment of the first cost of the plant would be fair under the circumstances.

A question arises here, which had no place in the Paducah Junction case, and that is as to whether existing contract burdens for watchman and gate-keepers should be continued upon the companies that now sustain them when interlocking is introduced, which takes the place of flagging and the operation of gates. It appears that by contract the

Western Indiana and Belt Companies are bound to maintain gatemen at their crossing with the Alton, and that the Atchison, by a like contract, is bound to maintain gateman at its crossing with the Western Indiana and Belt upon the other side of the canal. We have before us the affidavit of Mr. Thomas, President of the Belt Company, showing that he now pays two men at the rate of \$55.00 per month each, at the crossing of the Alton; but the affidavit also shows a station is maintained there, and therefore the company keeps telegraph operators at that place, who command higher wages than could be earned by a man competent only to manage the gates. He swears that suitable men could be procured at \$40.00 per month each for the work contracted with the Alton to be performed. As it would require a day man and a night man, it would therefore be necessary, according to Mr. Thomas' affidavit, for the Western Indiana & Belt Companies to expend \$80.00 per month for the guarding of this crossing in accordance with the contract with the Alton.

We have before us the affidavit of Mr. Nixon, of the Atchison, showing what the Atchison pays for help at the other crossing, in which affidavit he estimates that \$65.00 per month would be sufficient to procure the services called for by the contract of the Atchison with the Belt and Western Indiana Companies. Evidently it would cost as much at one place as it would the other, they being only a few hundred feet apart, and the services required being the same in both cases. We are therefore inclined to adopt the statement of Mr. Thomas as to the contract obligation, namely, \$80.00 per month, or \$960.00 per year for each crossing. Such wages should be paid as will command efficient service. These contract burdens were assumed by these companies severally in order to obtain their crossings, and the commission see no reason why the burden should not be continued after interlocking is adopted. The interlocking dispenses with the necessity of keeping gateman or flagman, and the work is performed by the interlocking machine much more satisfactorily and with much more benefit to the companies than it could be done in the old way. It is therefore the opinion of the commission that these burdens should be continued and applied to the operation of the interlocking plant so far as they may be needed for that purpose.

An order will therefore be entered in this case providing that the two crossings mentioned in the petition and in the citations shall be interlocked in a single system; and that of the original cost of the construction of such interlocking plant, the Western Indiana and Belt companies shall pay jointly four-tenths, the Alton Company three-tenths, and the Atchison Company three-tenths; that the expense of maintaining said interlocking machine and plant in good order and repair shall be paid by the said companies in the same proportion, that of the cost of operating the said interlocking machine the Western Indiana and Belt Companies shall jointly pay one-half thereof, up to the point where said one-half may reach the sum of \$80.00 per month, or \$960.00 per year, and the other half of the expense of such operation shall be paid by the said Atchison Company, up to the point where the said Atchison's one-half shall reach the sum of \$80.00 per month, or \$960.00 per year, and in case the cost of operation of said interlocking plant shall exceed the

aggregate of the sums so ordered to be paid by the Western Indiana and Belt Companies and by the Atchison Company, to-wit: the sum of \$160.00 per month, or \$1,920.00 per year, then the order shall provide that the excess over and above that amount shall be paid equally by the three companies concerned.

Order entered Dec. 10, 1891.

THE CHICAGO & ALTON RAILROAD CO.

V.

THE ATCHISON, TOPEKA & SANTA FE RAILROAD CO.

Appearances—For petitioner, Wm. Brown, General Solicitor; for respondent, A. D. Wheeler, Attorney.

BY PHILLIPS, *Chairman*.

This is a petition by the Chicago & Alton Railroad Company for an order to compel the Atchison, Topeka & Santa Fé Railroad Company to join the petitioner in interlocking the crossing of the tracks of the two companies at Corwith, in Cook county. The location of the tracks of the Atchison Company at this point are peculiar. The Alton has two tracks running parallel with the Illinois & Michigan Canal and immediately on the south side thereof. The Atchison has, or will have, two main tracks also running parallel with the canal upon the north side. Another main track of the Atchison Company connecting with the Corwith yards and running north and south, passes over the canal and forms a crossing with both the tracks of the Alton and the other tracks of the Atchison. Besides these there is a switch or turn-out of the Atchison extending over the canal and crossing the Alton tracks near the place where the other north and south line of the Atchison crosses them. It is necessary to include both the main track crossings, the turn-out crossing, and all the switches in one system of interlocking.

The Alton here, as in the other cases before us, has contended that the entire burden of putting in, maintaining and operating this interlocking should be cast upon the Atchison because it is the junior company. We have disposed of this claim of seniority in our opinion rendered in the case of the Paducah Junction crossing. In the case before us, however, a very large proportion of the cost of the interlocking plant is occasioned by the number and peculiar location of the tracks of the Atchison Company, and it would be unjust to compel the Alton Company to pay equally with the Atchison under the peculiar circumstances of this case.

The Atchison Company contends that the expense of construction operation and maintenance should be apportioned according to the number of main tracks of each company involved in the crossing, which in this case would be a burden of two-thirds of such expenses upon the Atchi-

son company and one-third upon the Alton Company. While we have in the other case referred to expressed our dissatisfaction with this basis of apportioning expenses as applied to all cases, yet in the particular case now under consideration we think the result which would be obtained by applying the main track basis would be just and equitable. The Atchison Company offers to pay two-thirds of all cost and expense and we are inclined to regard this, under the circumstances, as a fair offer.

Since this case was heard before the commission the Atchison Company has filed a plat or drawing showing that the projected line of the canal to be built by the Chicago Drainage Commission passes near the proposed crossing of the tracks of these two companies, and, it is said, if the canal is built as this plan indicates, some change may have to be made in the location of the tracks of the Atchison Company. We are, however, advised by our consulting engineer, that the building of the canal as proposed will not necessarily interfere with the interlocking plant required for these crossings; and inasmuch as the digging of the canal is somewhat remote, and may depend upon contingencies, we have concluded not to change the plan of interlocking upon that account. We do not think the proposed canal a sufficient reason for denying the prayer of the Alton's petition.

An order will therefore be entered in this case for the interlocking of the system of crossings and switches shown upon the plats that have been submitted and partly described in the petition in this case, which order shall provide that the original cost, expense of future maintenance, and the expense of operation, shall be paid two-thirds by the Atchison, Topeka & Santa Fé Railroad Company, and one-third by the Chicago & Alton Railroad Company.

Order entered Dec. 10, 1891.

THE CENTRALIA & CHESTER RAILROAD CO.

V.

THE LOUISVILLE & NASHVILLE RAILROAD CO.

Appearances—For petitioner, W. S. Forman; for respondent, J. M. Hamill.

BY THE COMMISSION.

The really disputed question here is whether or not petitioner shall be required to interlock this crossing. Having been unable as yet to arrive at a conclusion satisfactory to all of us on this question, and realizing the injustice of longer holding the case, while petitioner is waiting to build its road, we have concluded to enter an order permitting petitioner to cross so the work can be proceeded with, and to reserve consideration of the question of interlocking. By this means the commission will not lose jurisdiction of this subject, and that deliberation can be had which will insure a more nearly correct conclusion. There are said to be

machines in use less expensive and better adapted to a crossing of this kind than the more elaborate appliances commonly in use, and which it would not be onerous upon petitioner to put in at this crossing. We can, while holding the question, investigate these appliances; and in the meantime actual experience arising from use of the crossing may demonstrate more clearly what the public good requires in the premises.

It is ordered that the petitioner, the Centralia & Chester Railroad Company, have leave to cross with its track the track of the respondent, the Louisville & Nashville Railroad Company, at the point mentioned in their petition now on file in this cause.

Ordered further that this cause be kept on the docket and that the question of the protection of said crossing by interlocking or otherwise be held under advisement.

Adopted March 18, 1892.

INTERLOCKING ORDER—BY PHILLIPS, *Chairman*.

Upon further consideration of this petition the commission have arrived at the conclusion that the crossing requires protection by interlocking. It is probable that if in any case the commission found themselves able, consistently with their views of duty, to permit any new crossing to be formed without the protection of interlocking, this would be such a case. We are, however, firmly convinced that all new crossings at grade hereafter constructed in this State should be protected. A device can be used at the crossing in question, which, it is believed, will not cost to exceed \$1,500.00. The business of the Centralia and Chester Railroad will probably be light for some time to come, and the distant signals on that road might be dispensed with and an interlocking device adopted and put in, to be operated by the trainmen of the Centralia & Chester road, thus dispensing with the necessity of keeping a force expressly for the purpose of operating this machine. This implies, of course, that the signals on the Louisville & Nashville road be kept set at "advance" in both directions. When a train on the Centralia & Chester road desires to cross it will be necessary for it to stop at the dwarf home signal, a trainman can proceed to the tower house, reverse the signals and give the Centralia & Chester train the right of way. Then, after the train has passed the home signal up on the other side, the trainman in the tower can again set the signals at "advance" for the Louisville & Nashville trains. By this means the expense of operation could be avoided. Should, however, a plan be adopted which does not contemplate a regular force for operation, it will be absolutely necessary that some employé of the Centralia & Chester Railroad Company be charged with the duty of keeping the machine in adjustment, oiling the same, and cleaning, filling and hanging out the signal lamps.

The above are suggestions which the roads concerned have the power to adopt or not as they choose. Mr. Charles Hansel, consulting engineer of the commission, has prepared a plan for such a device as we have suggested, a copy of which will be furnished the respective companies upon application.

Should the companies prefer a device of the regular pattern in use with distant signals upon both roads to be operated by men kept for the purpose, there will, of course, be no objection on the part of the commission to the adoption of such a device by the agreement of the parties. We should indeed prefer such a device, but have been constrained to make the above suggestions upon the supposition that the new company, the Centralia & Chester, is perhaps not financially in position to put in an expensive machine at this time. Should the business of the Centralia & Chester road increase, and should it be hereafter demonstrated by experience that a more elaborate plant is necessary, high home signals and distant signals can be added on the Centralia & Chester road, and provision be made for the operation of the plant by regular men; and this matter will be within the power of the commission at any time if application is made by either party in this behalf, or the commission can proceed of its own motion if the public good is found to require it.

It is ordered that the crossing of the main track of the Centralia & Chester Railroad and the Louisville & Nashville Railroad described in the petition in this cause be, and the same is hereby ordered to be protected by a system of interlocking and switches.

It is further ordered that the petitioner, the Centralia & Chester Railroad Company, shall pay the first cost of the construction and the putting in of such interlocking device, and also the expense of maintaining the same in good order, condition and repair; but the question of apportioning the expense of the operation of said plant is hereby reserved until such time as the device to be used shall have been agreed upon by the parties, or, in case of their failure to agree, prescribed by the commission. And inasmuch as under the statute the companies are permitted to agree upon a plan of interlocking, provided they can do so, therefore it is ordered that this case be held under consideration by the commission, pending the efforts of the parties to agree upon a plan.

Adopted June 21, 1892.

THE TAMAROA & MT. VERNON RAILWAY CO.

v.

THE LOUISVILLE & NASHVILLE RAILROAD CO. AND SOUTHEAST &
ST. LOUIS RAILWAY CO.

Appearances—For petitioner, H. Clay Horner; for respondent, J. M. Hamill.

By PHILLIPS, *Chairman*.

This is a petition under the act of 1889, wherein the Tamaroa & Mt. Vernon Railway Company asks leave to cross, with its proposed track, the track of the Louisville & Nashville Railroad Company at a point in the city of Mt. Vernon, Jefferson county, Ill., about 1,700 feet

east of the passenger station of the Louisville & Nashville Company, in that city. Although at the immediate point of proposed crossing the Louisville & Nashville track is practically level, there is a sharp up-grade to the west of the crossing extending to the neighborhood of the passenger station. For a distance of 1,200 feet east or southeast of the proposed crossing, the grade of the Louisville & Nashville road is level, and still farther to the eastward the grade falls. The proposed crossing is on a two degree curve.

Our function under this petition is to prescribe the place and manner of this crossing, the parties not having been able to agree. As to the manner of crossing, it is not contended that the same should be constructed otherwise than at grade as proposed. The place of crossing is objected to by respondent on account of the down-grade from the west approaching the crossing point; but there seems to be no serious contention that a better point, which would at all answer the purpose of the petitioning company, could be selected. At any rate, no sufficient showing is made to justify the commission in ordering the crossing at a different place from that proposed.

It seems also to be conceded that the commission should, under the power conferred under the interlocking act of 1891, cause this proposed crossing to be interlocked; and certainly the location and steepness of the grades renders this imperative.

The really controverted question is, whether or not the petitioning company shall pay the entire expense of the operation of the interlocking plant, or whether such expense shall be divided, in the discretion of the commission, between the two companies. The petitioner's counsel concedes that, under the act of 1891, the petitioner is bound to pay the original cost of the "construction" of the interlocking machine, and also the expense of "maintaining" the same—restricting the latter word to include only such repairs and renewals as the interlocking device may from time to time require. Respondent insists that a proper construction of the statute requires that petitioner, in addition to the cost of construction and the expense of maintaining, should also bear the whole expense of operating the plant after it is completed, meaning by expense of operation the wages of those who work the machine.

The language out of which this question arises occurs in the concluding portion of section 3 of the act of 1891, and is as follows:

"Said commission shall further designate, in such order, the proportion of the cost of the construction of such plant, and the expense of maintaining and operating the same, which each of the companies or persons concerned shall pay. In case, however, one railroad company shall hereafter seek to cross at grade, with its track or tracks, the track or tracks of another railroad company, and the Railroad and Warehouse Commission shall determine that interlocking or other safety appliances shall be put in, the railroad company seeking to cross at grade shall be compelled to pay all cost of such appliances, together with the expense of putting them in and the future maintenance thereof."

It will be noted that that portion of this language which relates to crossings already in existence, names three items of expense, namely,

"cost of construction," "expense of maintaining," and expense of "operating." The language which refers to those companies which "shall hereafter seek to cross at grade," etc., mentions only "all cost of such appliances, together with the expense of putting them in, and the future maintenance thereof." Undoubtedly the word "maintenance" is broad enough, in its common acception, to include the cost of operating the machine. However, to arrive at its meaning in the place where it stands in this section, it is necessary to consider the language used in the preceding part of the section, and there we find the expense of maintaining the plant mentioned as one item of expense, and the expense of "operating" as another. We think the word "operating," so used, designates the wages of such employes as may be needed to control and work the machine in actual use. The Legislature having included the wages of operators in a phrase distinct from that of "maintaining" the machine in this same section, we do not feel at liberty, under the well recognized canons of statutory construction, to extend the meaning of the phrase "future maintenance," as subsequently used, so as to include such wages.

We shall enter into no learned disquisition in support of this view, but state it as the conclusion at which we have arrived, and which, we think, would be adopted by the courts, if construing this statute under the long-established and well recognized rules of statutory construction.

In case of the interlocking of crossings already existing when the act was passed, a discretion was vested in this commission to apportion cost of construction, expense of maintaining and expense of operation between the companies, as justice might be deemed to require. In the case of crossings afterwards to be constructed, the exercise of this discretion by the commission was withheld so far as the items of first cost and maintenance are concerned, the legislative discretion having been here substituted through a positive statutory direction. Thus the cost of "operating," meaning, as we view it, the wages of men to operate the machine, is, in the case of new crossings, left unprovided for, and this remains to the reasonable discretion of this commission.

How shall this undistributed expense be apportioned by us? Left to our judgment in the premises, we confess we could see no good reason to treat expense of operation differently from the other items named; and, perceiving no sound distinction, we might follow the policy of the Legislature, and visit the expense of operation also upon the company seeking the crossing. This, however, we are not at liberty to do, because it is the legislative view, not our own, which we must seek to follow; and, whether we are able to perceive a distinction or not, we must suppose the Legislature saw a distinction, otherwise they would have included expense of operation with the other items to be paid by the new comer, which latter, with the subject directly before them for consideration, the law-makers did not do. We therefore conclude the expense of operation should, under the language of this section, be apportioned by us between the companies on such basis as we may deem equitable under all the circumstances of the case.

And it seems not improper to remark here, that when a railroad company lays down its track, it does so as a public agency by virtue of a

franchise derived from the State, and which it holds for the public benefit, and subject to such future regulations and burdens, police and otherwise, as may, in the proper care for the public interest, be imposed from the same source. Had the right-of-way of the first road which crossed Illinois been held by law too sacred to be crossed by the tracks of other roads without the imposition of large burdens based solely upon the advantages of priority in time, it is not difficult to see that the development of the State might have been, by such a policy, seriously retarded.

In the case of the petition of the Chicago & Alton Railroad Company for the interlocking of its crossing with the Illinois Central and Wabash tracks at Paducah Junction, wherein it was urged that the petitioning company was entitled to exemption from cost and expense by reason of its seniority, this commission observed:

"For the reasons given, seniority can not be taken as a basis of determination, discarding other considerations. There may arise cases where it will constitute an element proper to be considered; but, speaking generally, if the commission finds two railroads in operation upon the ground, without special contract burdens as between themselves, they must be dealt with on a basis of practical equality."

The Supreme Court of Illinois, in the case of Chicago & Alton Railroad Co. v. Joliet, Lockport & Aurora Railway Co., 105 Ill., 388, at the particular page 401, discussing the question whether or not the stopping of trains by the senior road at the proposed crossing, as required by statute, could properly be considered as an element of damage in condemnation, speaking through Chief Justice Scott, says:

"Corporations, as well as citizens, are subject to the police power of the State * * * Should it be held that before a new railroad could be laid across the track of a railroad previously construed, the damage for any inconvenience such company might suffer on account of having to submit to and observe police regulations in regard to the conduct of its business thereafter should first be ascertained and paid by the new road, it would amount to a practical prohibition of the construction of new railroads in the State. * * *

"Unless, therefore, every railroad corporation takes its right-of-way subject to the right of the public to have other roads, both common highways and railways, constructed across its track whenever the public exigency might be thought to demand it, the grant of the privilege to construct a railroad across or through the State would be an obstacle in the way of its future prosperity of no inconsiderable magnitude. The claim made for damages, in this respect, has neither reason nor weight of authority for its support. In *Railway v. Railway*, 30 Ohio St., 604, it is well said: 'While the elder road can demand compensation for its property to the extent of its appropriation, it has no right to demand tribute from the junior road for the enjoyment of the same corporate franchises that it possesses. Each owes its authority to operate its road to the same source—the State—and neither has the right to tax the other for the enjoyment of these mutual privileges. It is true that

the crossing imposes a new burden, but it is one to which it is subject by the nature of the case and the terms of its charter.' Other courts of acknowledged authority sustain the same general doctrine."

We think these views applicable here, and it is our opinion that since the Legislature left the item of expense of operation for apportionment by the commission between the companies, it would not be unjust in this case, in view of the fact that all other expenses are cast by law upon the new comer, to require the expense of operating the plant to be paid equally by the companies, which will accordingly be done.

It is ordered and decided that petitioner, the Tamaroa & Mt. Vernon Railway Company, have leave to cross with its track at grade the track of the respondent, the Louisville & Nashville Railroad Company, at the place and in the manner specified in the petition on file in this cause—right-of-way for such crossing being first obtained under the laws of Illinois relating to eminent domain.

It is ordered further that the crossing of tracks to be thus formed, be protected by a system of interlocking signals and switches, to be agreed upon by the parties, with this commission's approval, if the parties are able to agree, the cost of construction and the expense of maintenance of which device shall be paid for by the Tamaroa & Mt. Vernon Railway Company, as provided by statute, but it is hereby ordered and decided by the commission that of the cost of the operation of such interlocking device, the said Tamaroa & Mt. Vernon Railway Company, petitioner, shall pay one-half, and the said Louisville & Nashville Railroad Company, respondent, shall pay one-half. And inasmuch as the statute only directs the Railroad and Warehouse Commission to prescribe by order a plan of the interlocking in case the parties are unable to agree, therefore, it is ordered that this petition be further held under consideration by the commission pending the efforts of petitioner and respondent to agree upon a plan of interlocking.

Adopted June 21, 1892.

THE CHICAGO & ALTON RAILROAD CO.

V.

THE CHICAGO & WESTERN INDIANA RAILROAD CO.
(THE BELT RAILWAY COMPANY OF CHICAGO, LESSEE),

AND

THE ATCHISON, TOPEKA & SANTA FE RAILROAD CO.

By PHILLIPS, *Chairman*.

Crossing at Hawthorne.

This is an application by the Chicago & Western Indiana Railroad Company (The Belt Railway Company of Chicago, lessee), to modify the order heretofore entered in the above petition and citation upon the

point of the division of the original cost of the construction of the device ordered, and of the expense of the maintenance of said device in good order and repair.

In the original opinion entered in this matter, it was said:

"There are a switch and a signal which add two levers in the tower, and are located between the tracks of the Alton and the Atchison, upon one of the Western Indiana tracks. These appliances are not essential to the interlocking of the crossing, but are put in, we learn from the consulting engineer, at the request of the Western Indiana and Belt Companies for their exclusive accommodation. So far as the other companies are concerned, the crossings could be perfectly interlocked without these appliances. We therefore think it not unjust to charge the extra cost of these particular appliances to the Western Indiana and Belt Companies. Without these, the number of switches, signals and levers would be exactly equal upon all these lines. Apportioning first cost upon levers, which, under the circumstances, we think would be just, the Chicago & Western Indiana and the Belt Companies would pay four-tenths of the first cost, the Chicago & Alton three-tenths, and the Atchison three-tenths. We think such an apportionment of the first cost of the plant would be fair under the circumstances."

In the order for the interlocking, entered on the same day the opinion was delivered, the following provision was incorporated upon the subject of this present application:

"That it would be just and equitable for the companies named in said petition and citation to pay for the original cost and future maintenance of said device, as follows: The Chicago & Western Indiana Railroad Company (The Belt Railway Company of Chicago, lessee), four-tenths; the Chicago & Alton Railroad Company, three-tenths, and the Atchison, Topeka & Santa Fé Railroad Company, three-tenths."

The present application is made upon the ground that the division of this expense was made by the commission under a misapprehension of the facts. It is urged that the commission have made a mistake, and have power to correct it, and should correct it. The ground chiefly urged for this application is, that the commission erred in believing and saying that the switch and signal located upon the track of the Western Indiana Company, between the Alton and Atchison tracks, is of benefit only to the Western Indiana and Belt Companies. The representatives of the latter companies admit that said switch and signal were put in at their request, but deny that they were put in for their exclusive benefit. It was not, however, shown upon the hearing that the Chicago & Alton Company is in any way benefited by this switch and signal. We understand the claim, so far as the Alton Company is concerned, was abandoned, but it was urged upon the hearing that the Atchison Company is benefited equally with the Western Indiana and Belt Companies.

Upon the further hearing of this case under this application, it becomes apparent that the Atchison Company is, to a small extent, benefited by these appliances, but the benefit it derives from them is very much less than the benefit derived by the Western Indiana and Belt

Companies. It would be very difficult, indeed, to apportion the added cost of this switch and signal between the companies upon the evidence before us. The benefit conferred upon the Atchison Company being so slight compared with the benefits derived by the Western Indiana and Belt Companies, and the appliances having been originally placed where they are upon the request of the latter companies, we are unable to see our way to charge any part of them to the Atchison Company.

It is very apparent, however, that there is an error in this order. Dividing the cost upon the basis laid down by the commission, there is no possible way in which the division into tenths could have been made except through a blunder, which was in fact committed.

It will be observed the opinion says: "Without these (meaning the switch and signal in question), the number of switches, signals and levers would be exactly equal upon all these lines." This is true. Counting the switches, signals and levers upon each of the three roads concerned, aside from the extra derail and signal in question, the number is thirty, there being ten switches and signals on each line. Therefore, without the extra derail and signal, the order would correctly have been for each company to pay one-third of the cost. But when the extra derail and signal are added they make the number thirty-two in all; and upon the basis adopted, the cost would resolve itself into thirty-seconds instead of tenths. On that basis the Chicago & Alton Company should pay ten thirty-seconds, the Atchison Company ten thirty-seconds, and the Western Indiana and Belt Companies twelve thirty-seconds, which would be a less proportion to be paid by the latter. The exact excess charged to the Western Indiana and Belt Companies on this basis, is one-fortieth. Hence it is no more than just that this mistake should be corrected and the order modified.

The commission are satisfied, further, upon consideration of the whole matter, that a better way to have arrived at the extra cost to be paid by the Western Indiana and Belt Companies, would have been to tax these companies not with an extra proportionate share of the whole cost, but with the actual cost of the switch and signal in controversy. If these companies pay the actual extra cost of these appliances, it is all that could be justly demanded, and that extra cost, the commission are informed, would be less than a proportionate share based upon the number of levers, as attempted to be done in the original order.

It is, therefore, directed that the secretary enter upon the docket the following modified order upon the particular question of the apportionment of the original cost and future maintenance of said device that is to say:

"Each of the said companies, to-wit: The Chicago & Western Indiana Railroad Company (The Belt Railway Company of Chicago, lessee), the Chicago & Alton Railroad Company, and the Atchison, Topeka & Santa Fé Railroad Company, shall pay one-third part of the original cost of construction, and of the expense of maintenance of said entire device, with the exception of the switch and signal located upon the track of the Chicago & Western Indiana Railroad Company, between the tracks of the Chicago & Alton Railroad Company and the Atchison,

Topeka and Santa Fé Railroad Company; and as to the original cost and expense of maintenance of the said last mentioned switch and signal so located, it is ordered that such actual cost and expense be paid by the Chicago & Western Indiana Railroad Company (The Belt Railway Company of Chicago, lessee).

"And it is further ordered, that the original order entered in said cause, except as the same is hereby expressly modified, shall stand as originally entered in this proceeding."

Opinion adopted Nov. 11, 1892.

THE BALTIMORE & OHIO & CHICAGO RAILROAD CO.

v.

THE SOUTH CHICAGO CITY RAILWAY CO.

Appearances—For petitioner, E. R. Jewett, Attorney; for respondent, Osborn & Lynde, Attorneys.

OPINION BY PHILLIPS, *Chairman*.

The petition in this case shows that the South Chicago City Railway Company, defendant, "is seeking under and by virtue of an ordinance of the city of Chicago, to lay its car tracks along and upon Commercial av., and to cross the tracks of petitioner in said Commercial av. at the west end of your petitioner's yards, at grade, and without precaution looking to the safety of the public, or to the protection of human life transported by the said Street Railway Company or petitioner;" also that said Street Railway Company proposes to operate its line with electrical power, under the system known as the "trolley system," and that it (defendant) "proposes to put in the grade crossing aforesaid, irrespective of the control exercised by your Honorable Board in the matter of the place and manner of railroads crossing or intersecting each other; and without regard to the safety of the public."

Accompanying said petition is a plat showing the location of the proposed crossing; and the petition "prays that action may be taken by your Honorable Board in the premises, to the end that said crossing may be rendered safe, and as far as possible free from danger to the public."

It is objected by the defendant among other things, that the petition does not state a case coming within the provisions of the statute of Illinois relating to railroad crossings, and does not ask any relief which comes within the jurisdiction of this board.

The only power of the commission to compel the protection of railway crossings must be found in the act entitled, "An Act to protect per-

sons and property from danger at the crossings and junctions of railroads," etc., approved June 2, 1891. The first section of that act provides:

"That in every case where the main tracks of two or more railroads cross at grade in this State, any company owning or operating any one of such tracks whose managers may desire to unite with others by protecting such crossing with interlocking, or other safety devices, may file with the Railroad and Warehouse Commission, a petition stating the facts of the situation, and asking said Railroad and Warehouse Commission to order such crossing to be protected by interlocking signals, devices and switches, or other safety appliances, etc."

Section 3 of the act directs the manner of proceeding to hear cases for the protection of crossings, giving the commission power to apportion costs and expenses, and concludes as follows:

"In case, however, one railroad company shall hereafter seek to cross at grade with its track or tracks, the track or tracks of another railroad company, and the Railroad and Warehouse Commission shall determine that interlocking or other safety appliances shall be put in, the railroad company seeking to cross at grade shall be compelled to pay all costs of such appliances, together with the expense of putting them in and the future maintenance thereof."

Do these provisions confer upon the commission power to order the protection of the crossing described in the petition? In other words, is the South Chicago City Railway a "railroad" within the meaning of the Interlocking Act of 1891? We think not. We are constrained to hold that this commission has no jurisdiction in the premises. The Legislature has provided for the incorporation and regulation of street railways by an act separate and different from that which pertains to the incorporation and regulation of railroads proper. Street railways were evidently not intended to be included in those acts of the Legislature which confer jurisdiction upon the commission to make and enforce schedules of maximum rates, to cause dangerous roads to be repaired and other like powers. Those acts have always been understood to refer to railroads, and not to street railways; and there is nothing to indicate that the Legislature intended that the Act of 1891 for the protection of railroad crossings was intended to have a wider scope than the previous Acts.

The fact that another power, electricity has been substituted which supplies a higher rate of speed, and makes street cars more dangerous instrumentalities than they were in the days when horse power was exclusively used, has not, we think, made them "railroads" within the meaning of such acts as that now under contemplation.

The petition does not pray for specific relief. It asks that "action may be taken to the end that said crossing may be rendered safe, etc." The only provision looking to the safety at crossings which the commission has power to enforce is their protection by interlocking signals or derails, or other like safety appliances. We have sought to avoid building up any technical system of pleading and practice before the commission in these cases, and might accordingly overlook the very

general terms of the prayer of this petition, were the case one over which we deem ourselves to have any power. Holding as we do, however, that this board is without jurisdiction in such a case, the petition must be dismissed, and the secretary will enter an order accordingly.

Ordered Dec. 27, 1892.

THE CHICAGO & ALTON RAILROAD CO.

V.

THE ILLINOIS CENTRAL RAILROAD CO.

Appearances—For petitioner, Wm. Brown, General Solicitor; for respondent, J. F. Wallace, Chief Engineer.

BY PHILLIPS, *Chairman*.

Crossing at Normal.

Respondent does not object to an order for the interlocking of the crossing described in this petition. The sole question made is as to the division of the cost. One item, that of the "operation" of the device, is not, however, in controversy, it being agreed that the companies should pay this equally. The question made is, how the first cost of the interlocking device, and the expense of its maintenance shall be paid for.

Mr. Wallace, Chief Engineer of the Illinois Central road, has urged upon us with much force of reason a general basis for the division of expenses in cases of this kind. We fully recognize the desirability of adopting some just rule of determination to be applied to such cases; but we have heretofore hesitated to lay down an inflexible rule, knowing well that experience sometimes spoils theories, and that it is not possible to foresee what new conditions may arise in future cases, not considered in adopting the rule.

Since discussing the different proposed rules of determination in our opinion in the case of the crossing at Paducah Junction, we have continued to give the subject attention. We are now strongly inclined to adopt, in the main, the basis suggested by Mr. Wallace as a rule of determination to be applied to future cases, except those which may be very exceptional in their facts and conditions, or in which subsisting contract obligations may change the rule.

That basis is as follows:

First—Each company to pay the original cost of all the apparatus and mechanism used upon its own tracks, including all signals, derails, pipe-lines, wire-lines, boxing and all connections in its tracks, and also the cost of putting all these in ready for use, and of maintaining the same in good repair.

Second—The cost of the interlocking machine proper and the expense of maintaining the same in good working order to be divided

between, or among, the companies in the proportion that the levers used to operate the appliance in the tracks of each company bear to the whole number of levers.

Third—The cost of the tower house wherein the interlocking machine is housed, and the expense of the operation of the machine, (i. e., wages of operators), to be divided upon the basis of the number of roads using the system.

We have varied the proportion of Mr. Wallace to the extent of dividing the cost of the tower on the basis of the number of roads instead of upon the basis of the number of levers. There is little to choose between the two methods, but we deem the division above stated the fairest, as a tower house would be needed in any event, and the cost of such tower would be little, if any, enhanced by a few additional levers. We therefore think cost of tower may be better grouped with expense of operation, than with the cost of the interlocking machine.

We see a possible difficulty to which this plan may lead, which we deem it proper to notice here. Under the second point above, which divides the cost of the interlocking machine in proportion to the levers used to operate the appliances located on the several tracks, a temptation will be offered to reduce the number of levers by making each lever carry too much work. The companies to the present proceeding, being under very enlightened and progressive management, are not likely to fall into an error so at variance with good signaling practice. It is not for them particularly that we add this caution. Any manifestation of the disposition stated in future cases must be corrected by the consulting engineer of the commission.

An order will be entered in this proceeding providing for the interlocking of the crossing described in the petition, and apportioning costs and expenses in the manner hereinabove specified. Our consulting engineer has prepared a plan for the interlocking of this crossing which we submit to the companies as a suggestion of what is deemed to be requisite for the proper protection of the crossing. The companies have a right, under the statute, to agree upon details of plan, if they can. In default of their speedy agreement in this particular, we will enter a further order covering that part of the case.

Ordered Dec. 27, 1892.

THE PEORIA & PEKIN UNION RAILWAY CO.

v.

THE PEORIA TERMINAL RAILWAY CO.

Appearances—For petitioner, W. S. Horton, Attorney; for respondent, George B. Foster, Attorney.

BY PHILLIPS, *Chairman*.

The proposed crossing, which the petition prays to have interlocked, is in the city of Peoria, at a point on the track of the Peoria & Pekin

Union Railway, 250 feet from the west end of the Illinois river bridge. A crossing at the point in question was originally proposed by the Peoria & Farmington Railway Company, which, at the May term, 1883, of the Peoria County Court, obtained by judgment in condemnation a right to cross at this point the right of way and track of the Peoria & Springfield Railroad Company, to which the latter company, petitioner, is the successor in the property by purchase on foreclosure. The track of the Peoria & Springfield Railroad (now the Peoria & Pekin Union) was before that time laid and being used, but the Peoria & Farmington road was but partly constructed after the condemnation, and its track never was laid. Respondent, the Peoria Terminal Railway Company, has succeeded to the Peoria & Farmington franchise and rights, and is now proceeding to construct the road on the line of condemnation, thus giving rise to the present proceeding.

Two questions only are presented here. The first is, does the public good demand the protection of the proposed crossing under the act of 1891? We do not understand the respondent seriously to contest this proposition. The P. & P. U. track at the point of the proposed crossing is used by three other companies under lease, namely: the L. E. & W., the J. E. S. and the "Big Four." The trains, both passenger and freight, passing the point are numerous. Proceeding westward into the city from the point of crossing, the P. & P. U. ascends a grade, and describes a curve, while on the east very near, is the draw-bridge of the P. & P. U. across the Illinois river, a navigable stream. In this day, when good practice is fast leading to the protection of all railroad crossings, on grounds of economy as well as safety, we could not long hesitate to hold that this crossing requires protection, even though it is true as contended, that the Peoria Terminal Railway Company will haul but few trains over the crossing.

The remaining question concerns cost and expense. Is this case one wherein the commission has discretion to apportion first cost of the apparatus, and the expense of putting in and maintaining the same between the companies; or is it one in which these items of cost and expense are, by the statute, cast upon respondent, as being a company "seeking to cross" with its track the track of another company?

Section 3 of the act of 1891 for the protection of crossings closes with the following provision relative to crossings which might be constructed after the passage of the act:

"In case, however, one railroad company shall hereafter seek to cross at grade with its track or tracks, the track or tracks of another railroad company, and the Railroad and Warehouse Commission shall determine that interlocking or other safety appliances shall be put in, the railroad company seeking to cross at grade shall be compelled to pay all cost of such appliances, together with the expense of putting them in and the future maintenance thereof."

Here, then, is the question: Does the judgment of the county court in condemnation entitle respondent to cross the track of petitioner without assuming those expenses of interlocking, mentioned in the provision above quoted, and now adjudged by us to be required at this crossing for the public good?

It is important to note that the function of the commission under the act of 1891 is wholly distinct from the function of the county court in condemnation. The two lines of action do not touch at any point. Condemnation fixes the damages for the use declared; the commission enforces a police regulation applied to the operation of trains, and designed for the public safety. As regards claims for damages, respondent reads its title clear in the judgment of condemnation. As regards right-of-way, it has, in legal contemplation, already crossed petitioner's track. As regards the police regulation embraced in the act of 1891, it has not crossed, but is still "seeking to cross." Had no judgment of condemnation been obtained prior to the passage of the act of 1891, we concede that respondent might even now, with that act in full force, proceed to condemn and get judgment, placing itself in precisely the legal attitude it now occupies, leaving the interlocking still unsettled as it now is. In other words, it could, we think, in face of the interlocking act, obtain its right to cross, so far as damages and right-of-way are concerned, but the question of the protection of the crossing to be made would remain as it remains now. That question would legally arise when respondent should physically "seek to cross with its track." By getting its right-of-way through condemnation proceedings, respondent did not obtain exemption from the operation of such police regulations as were then in force, or might afterwards be provided by law.

Such is the view we are constrained to take. Much nice reasoning might be indulged, but what has been said is deemed sufficient to express our view, which is, that respondent comes within the provisions of the statute above quoted, which casts upon the road seeking to cross: (1) the first cost of the machine to be used; (2) the expense of putting the machine in; (3) the expense of maintaining the same in good order and repair.

The question whether this statute is broad enough to compel the company seeking to cross to pay also the expense of operating the machine, was a subject of contention before the commission in the case of the Tamaroa & Mt. Vernon Ry. Co. v. The Louisville & Nashville R. R. Co., which was decided by us June 21, 1892. We refer to the opinion in that case for the construction of the statute in this particular. We arrived then at a conclusion which we see no reason to change, namely: That the expense of "operating" the machine was, by the statute, left to be apportioned by the commission in its discretion. In that case we divided such expense equally, and we think the same should be done here.

An order will be entered in this case in accordance with the views here expressed, which order will embrace the interlocking of the crossing and the fixing of the costs and expenses to be paid as herein indicated. But the companies still have a right under the statute to agree upon the plan of the interlocking if they can do so, subject to the approval of the commission. The order therefore entered will not embrace specifically the details of the device to be put in, that question being left for the parties to agree upon, if they can. In that connection we

suggest that the consulting engineer of the commission, who is an expert in such matters, and has given the subject of interlocking very large attention, be consulted by the parties.

Ordered Dec. 27, 1892.

THE MADISON, ILLINOIS & ST. LOUIS RAILWAY CO.

V.

THE WABASH RAILROAD CO., THE CLEVELAND, CINCINNATI, CHICAGO
& ST. LOUIS RAILWAY CO., THE CHICAGO &
ALTON RAILROAD CO.

Appearances—For petitioner, J. H. Overhall; for Wabash Railroad Co., George B. Burnett; for Cleveland, Cincinnati, Chicago & St. Louis Railway Co., James A. Connelly; for Chicago & Alton Railroad Co., William Brown.

OPINION BY PHILLIPS, *Chairman*.

Petitioner seeks to cross with its tracks the tracks of the Wabash, the "Big Four," and the Chicago & Alton Railroads, near Kinder, Madison county, Ill. The respondent companies are all objecting to the proposed crossing. Hence this petition for an order of the commission granting leave to cross.

The crossing is objected to, among other things, upon the ground that there is no public necessity for the building of petitioner's road across the tracks of respondents at the point proposed; that from all that appears the road will terminate on a prairie where there are no inhabitants; that the industries and factories which petitioner alleges it is seeking to reach upon the west are merely projected, and no one knows whether they will ever be built.

It is further objected that the only object of petitioner in forcing this crossing is to connect with what is known as the "Bluff Line" just beyond the point of crossing.

It is further contended that in case petitioner is permitted to cross at all, an overhead crossing should be ordered in order to avoid the danger and delay to travel and transportation which the statute directs shall not be "unnecessarily" interfered with.

Finally it is said, in case petitioner is permitted to cross at grade as prayed, it should bear all the expense of protecting the crossing, including the expense of operating the interlocker.

Upon these several points of objection we observe:

1. That the railroad commissioners of Illinois are not made by law judges of the necessity for building railroads. The General Assembly, in the act for the incorporation of railroads, has fixed all the conditions and limitations which exist on this subject. Neither this tribunal nor any other has been designated by law to judge of the traffic necessity of new lines. Some states, we believe, have put restrictions upon the build-

ing of railroads; but ours has not. Charters are taken out fixing the termini of the line to be built; and considerable latitude is allowed to the constructing company in locating its line between these points. Existing lines have in some cases been almost paralleled by useless and speculative lines of road; but there has been and is no legal authority, so far as we know, to prevent this, however much good business judgment may be violated.

2. The same may be said of the objection that the sole object of petitioner is to meet the "Bluff Line," and give that company traffic arrangements for crossing the tracks of respondents. If this objection were sustained it would go to the right of petitioner to build the road, and not merely to the particular place where it is seeking to locate its line. We are not aware that a connection with the "Bluff Line" is an illegal object, or that the commissioners of railroads have any power to examine into the motives of petitioner and to deny its petition upon the ground that its object is not deemed to be justifiable. The commissioners are simply directed by the statute, after hearing, to "prescribe the place where and the manner in which such crossing shall be made." If the company has complied with the necessary statutory provisions to enable it to build a railroad, we, as railroad commissioners, are not authorized to deny that a crossing of some kind may be made of the tracks across which it projects its line. In other words, we are to "prescribe" a crossing, not deny one altogether.

We have said no power exists to prevent petitioner from proceeding with the construction of its line upon the ground that it meets no public necessity and that the objects and motives of its projectors are not proper. It is sufficient, perhaps, to say that this commission can assume no such power under the statute. Petitioner, before proceeding to cross the right-of-way of respondents with its road must, in addition to getting leave of the commission, proceed to condemn its right-of-way in the county court. If any power exists in that court to check the building of this line upon the grounds urged, respondents can there interpose their objections, and that tribunal will judge of its own jurisdiction and powers.

3. The objection based upon the danger to travel and transportation upon respondents' lines, which will result from the proposed crossing, raises the question whether, with such crossing, well protected by interlocking, will entail an "unnecessary" danger and delay within the meaning of the statute. It is the judgment of the commissioners that every crossing, however well protected by interlocking, introduces some elements of danger and of delay to travel and transportation. The language of the statute is that future crossings shall be constructed "at such place and in such manner as will not unnecessarily impede or endanger the travel or transportation upon the railway so crossed."

We once had occasion to observe in the case of the Chicago, Madison & Northern R. R. Co. v. The Belt Railway Company of Chicago that the word "unnecessary" is not used in this statute in its strict philosophical sense. In that sense, only that is "necessary" which can not possibly be avoided, and there would always be a possibility of changing

the place and manner of a crossing in order to avoid even the slightest danger or delay. The General Assembly evidently expected that some crossings would still be made at grade. Grade crossings were not positively prohibited, but a means was provided by which, when the configuration of the ground proved favorable, crossings might be ordered to be constructed over or under. It was doubtless intended that reasonable regard should be had to the circumstances of each case. The question here, therefore, is not whether there will be some danger and some delay, but will this crossing "unnecessarily" impede or endanger travel or transportation within the sense intended by the General Assembly? Recognizing fully the desirability of separating crossing tracks where that is feasible, we do not think a fair application of this statute justifies us in ordering an overhead crossing in the present case. We have caused an estimate to be made of the expense of such a crossing, which is about \$77,000.00. Such a burden, the railway companies of this State have only in rare instances voluntarily imposed upon themselves in the past for the sake of avoiding danger and delay, even though when their lines were built, no such safety appliances were used or existed as those which may now be put in at this crossing.

Putting expense aside, however, as not to be weighed against danger to life and property, a further difficulty still exists. Petitioner states one of its objects to be to connect its line with the three respondent railways, particularly the "Big Four," which is the middle track of the three, they all lying parallel and near together at the point designated, the Wabash being upon the east, the "Big Four" in the middle and the Alton upon the west. The act for the incorporation of railway companies provides that every corporation formed under the act shall have power:

"To cross, intersect, join and unite its railways with any other railway before constructed, at any point in its route, and upon the grounds of such other railway company, with the necessary turnouts, sidings and switches, and other conveniences in furtherance of the objects of its connection; and every corporation whose railway is or shall be hereafter intersected by any new railway shall unite with the corporation owning such new railway in forming such intersection and connection, and grant the facilities aforesaid; and if the two corporations can not agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connection, the same shall be ascertained and determined in manner prescribed by law." 2 Starr & Curtis, page 1914, paragraph 6.

In order to "intersect, join and unite" its tracks with the tracks of respondents, as it seems petitioner has a right to do under the above provision, petitioner would be compelled to build an additional track upon a level with the tracks crossed. But the same difficulty we now have would then again present itself; for petitioner could not connect with the "Big Four" from the east without crossing the Wabash; and it could not connect with the Alton without crossing both the Wabash and the "Big Four." Thus if petitioner were to insist upon its right to connect with these roads, we should have practically a grade crossing

at last; and although such a crossing, made for the purpose of delivering and receiving cars, would perhaps be less used than a regular grade crossing, it would, nevertheless, in the judgment of the commission, be such a crossing as would require protection by interlocking. Thus we see an order for an overhead crossing would probably tend very little to simplify the situation. We have therefore determined that we can not deny the prayer of the petition. While interlocking machines do not entirely avoid danger and delay at crossings, they do have the effect of reducing these to a minimum. With such an equipment we are not able to say in the language of the statute that a grade crossing here would "unnecessarily impede and endanger travel and transportation."

4. The question of the division of the expense of operating an interlocker remains to be considered. Petitioner concedes that the statute casts upon it the burden of paying the first cost of the interlocking appliance, of putting the same in ready for use, and of maintaining the same in good repair. Respondents contend that to this should be added the burden of also operating the machine. Upon this question the commissioners have fully expressed their views in the opinion in the case of the Tamaroa & Mt. Vernon Ry. Co. v. The Louisville & Nashville R. R. Co., decided June 21, 1892. We have seen no reason to change the views we there expressed. Under the construction given to the statute in that case the expense of the operation of this interlocker, i. e., wages of operators, would be paid for upon the basis of the number of roads using the machine, each paying equally.

In accordance with the views here expressed an order will be entered granting petitioner the right to cross at grade at the point designated in the petition. The order will provide that the crossing shall be protected by an interlocker of improved modern pattern, upon the construction and details of which the companies will be left to agree if they are able to do so. The order will provide that the first cost of such interlocker, the expense of putting the same in, and the expense of maintaining the same in good order and repair shall be paid entire by the petitioner; and that the cost of operating the said machine shall be paid by petitioner and the three respondents equally, one-fourth each.

Ordered Jan. 3, 1893.

Motion to set order aside overruled April 14, 1893.

THE CHICAGO & EASTERN ILLINOIS RAILROAD CO.

V.

TOLEDO, PEORIA & WESTERN RAILWAY CO.

Appearances—For petitioner, W. H. Lyford; for respondent, W. S. Horton.

BY PHILLIPS, *Chairman.*

The grade crossing at Watseka, Ill., which the petition prays may be protected by an interlocker, is not more dangerous, perhaps, than

many other such crossings in this State. We can not, however, agree with the allegation in respondent's answer, "that said crossing is safe to life and property, and does not require the protection prayed for in the petition." We do not believe any grade crossing of main tracks can be perfectly safe to life and property. We think all such crossings should be protected as rapidly as due regard to revenues, and to all other kindred precautions looking to the public safety will permit. Everything can not be done at once, however; and it was not the intention of the lawmakers, in passing the act of 1891, to compel all crossings to be forthwith interlocked. Had this been their object, they would have so provided.

The counsel of petitioner stated upon the hearing that the petitioning company would be willing, rather than that the protection of this crossing should entirely fail, to pay two-thirds of the cost of the construction of the device. The disparity in the volume and importance of the traffic on these roads, while not admitted to be a controlling consideration in such cases, is deemed a sufficient reason on which to take petitioner at its own offer. The respondent road is a property which, under its present excellent and efficient management, is constantly improving, and rapidly retrieving the misfortunes of the company's earlier period. We think, under all the circumstances, the petitioner can well afford to pay two-thirds of the cost of an interlocker at this crossing. The expense of the maintenance and operation of the machine will, however, be equally divided between the two companies.

The secretary will enter an order directing that the crossing described in the petition be interlocked, and providing that of the first cost of the device and of putting the same in ready for use petitioner pay two-thirds and respondent one-third, and that of the cost of maintaining such device in good order and repair, and of operating the same, each of the companies pay one-half. The order will provide that the case be further held while petitioner and respondent agree upon the details of an interlocking device, as provided by statute, if they are able to do so.

Ordered Jan. 4, 1893.

THE JACKSONVILLE, LOUISVILLE & ST. LOUIS RY. CO.

V.

THE ST. LOUIS & CHICAGO RAILWAY CO.

Appearances—For petitioner, I. L. Morrison, General Solicitor; for respondent, Frank H. Jones, Attorney.

Crossing at Litchfield.

At a session of the Railroad and Warehouse Commission of the State of Illinois, held at its office in Springfield, Ill., this day, present Isaac N. Phillips and J. C. Willis, Commissioners, the following proceedings were had in this cause:

The commissioners being fully advised in the premises, find that it is impracticable to interlock the crossing described in the petition by a separate device, but that the same, together with the crossing of the Wabash Railroad and the Jacksonville, Louisville & St. Louis Railway, in which latter crossing a petition has been filed (numbered 9 upon the docket of the commission), should be interlocked with a single system.

It is therefore ordered by the commission, that this petition be, and the same is hereby, consolidated with said cause No. 9, entitled "The Wabash Railroad Company v. The Jacksonville, Louisville & St. Louis Railway Company," and that an order be entered in said latter cause covering both crossings.

Adopted Jan. 18, 1893.

THE BELLEVILLE CITY RAILWAY COMPANY

V.

THE LOUISVILLE, EVANSVILLE & ST. LOUIS CONSOLIDATED RAILROAD COMPANY.

OPINION BY W. S. CANTRELL, *Chairman*.

This is a petition by the Belleville City Railway Company for leave to cross with its track the track of the Louisville, Evansville & St. Louis Consolidated Railroad at grade at a point near the most northeasterly corner of Lot No. 106, in the third subdivision of Cahokia commons in said St. Clair county and State of Illinois, at an angle of about 42 degrees, the center point of crossing being about 1,373 feet south, 41 degrees west from center point of crossing of the St. Louis, Alton & Terre Haute Railroad Company with the said Louisville, Evansville & St. Louis Consolidated Railroad Company in the city of East St. Louis.

A crossing at the point proposed is resisted upon the ground:

First—"That the proposed crossing will unnecessarily impede and endanger existing travel and transportation more than would a like crossing at the present intersection of the Mobile & Ohio and the East St. Louis & Carondelet (Conlogue) Railroad."

Second—"That the statute of 1889 takes away the right of the new-comer or petitioner to choose its place of crossing, and gives the right to the Railroad and Warehouse Commission to prescribe the place where and the manner in which the crossing shall be made."

As to the first objection, we do not believe it well taken. This part of respondent's road which the petitioner seeks to cross is not used for passenger service at all, but only for freight traffic, therefore it may be said that there is no travel over it. Taking the two words used in the statute, "travel" and "transportation," and construing them together, we think a fair construction of them would mean "passengers being transported." There being no travel transported over this particular part of line, then there could be no danger to travel from the crossing asked for by petitioner.

But admit, for the purpose of this case, that this part of respondent's line is used for the transportation of passengers, as well as freight, and that numerous trains are operated over it daily, from either side of this proposed crossing, would there not be less danger at the proposed crossing than there would be to intersect respondent's road at its intersection with the M. & O. and Conlogue Railroad, where there are eighteen regular trains of the M. & O. that pass over this crossing daily in addition to the almost innumerable trains of the Conlogue?

We can not comprehend how there would be less danger in crossing one track over which there is operated fourteen regular trains than there would be in crossing three tracks over which is operated the same fourteen trains and eighteen additional trains, together with numerous trains, the exact number of which we are not advised, but which it is admitted do pass over this crossing.

In the first instance, these fourteen trains are only freight trains and do not carry passengers, while in the latter six of the eighteen are passenger trains. Wherefore we do not consider this objection tenable or well taken.

As to the second objection, "That the statute of 1889 takes away the right of the petitioner to select or choose its place of crossing and gives the right to the Railroad and Warehouse Commission to prescribe the place and manner of crossing," we are inclined to the opinion, in the absence of any judicial construction of this statute, that this position is well taken. All the cases cited by counsel on either side were rendered prior to the statute of 1889 and are only authority in this case by analogy and aid the commission but little in the construction of this statute.

There is no controversy here as to the rights of petitioner to cross the track of respondent, but it is most seriously contended by counsel for respondent that it is the duty of the commission to prescribe a place of crossing other than the one proposed by petitioner. That the same results can be obtained by the petitioner by crossing the track either at the intersection of the Mobile & Ohio and Conlogue with respondent's road, a distance of about 1,256 feet southwest of proposed crossing, or to remove the crossing 1,373 feet northeast of the proposed crossing to the intersection of the respondent.

The crossing of respondent's road and the M. & O. and Conlogue roads is the head of the switching yards of respondent's road and the point where respondents do the greater part of their switching and the making up of their freight trains. To locate the crossing of petitioner at this point would very largely increase the danger both to "travel and transportation," and subject each of the roads at this point to the greater inconvenience and delay in handling the business of their respective lines.

It has also been urged that petitioner could cross the line of respondent at its intersection with the St. L., A. & T. H. R. R., a distance of about 1,373 feet northeast of proposed crossing; to do this would require the petitioner to relocate that part of its line from lot 263, using the Cahokia road, which is a public highway, to the corner of lot 295; thence diagonally across the race track to the northeast corner thereof

where it would intersect the crossing of the St. L., A. & T. H. R. R. and respondent's line. This would, to say the least, be impracticable for many reasons.

First—The right-of-way along the Cahokia road and across the race track would have to be obtained, which would cost a large sum of money and doubtless involve the petitioner in long continued litigation, which would delay the completion of its road.

Second—The right-of-way of petitioner already obtained northwest of lot 263, and upon which petitioner has constructed its embankment, would have to be abandoned and all the cost of construction be thrown away.

Third—The crossing of these two roads, the St. L., A. & T. H. R. R. and the respondent would be met with just as persistent opposition as at the proposed crossing.

Fourth—If the permission to cross should be obtained at this point, there is no way that petitioner could make its connection with the Conlogue or Wiggins Ferry Lines except to use the tracks of the St. L., A. & T. H. R. R. Co., which would impose additional burdens in the way of rentals of trackage—or they would be compelled to condemn a right-of-way over lots upon which are already built business houses, residences, etc., and which would, in a thriving, growing, prosperous and populous city like East St. Louis, cost a fabulous sum of money.

The St. L., A. & T. H. R. R. operates over this crossing daily eighteen regular trains, six of which are passenger trains. Add to this fourteen freight trains of respondent, which are also operated over this crossing, and we have a total of thirty-two trains, and if we should thrust a third crossing in at this point it would most seriously interfere with the traffic of these lines and very greatly enhance the danger to travel.

In the final argument of this case counsel for respondent insisted that if the petitioner should be granted the permission to cross the track of the respondent at its proposed crossing, then the commission should provide in its order that it protect its crossing with proper interlocking devices. If the respondent operated regular passenger trains over this particular part of their line, the commission would not hesitate to order the crossing interlocked, but as they do not do so, and inasmuch as it is stated by counsel for petitioner that its road is purely a freight road, we do not see the necessity at this time to ask the petitioner to incur this expense. There are so many crossings in the State over which are operated a large number of passenger trains daily, and which are more dangerous than the proposed crossing, that are not protected by interlocks, that we do not feel that we should say to this petitioner that before you are allowed to cross respondent's road you shall interlock your crossing. If at any time in the future the business of petitioner and respondent on this line should grow to that extent that either or both should do a regular passenger business, then the commission can and doubtless will order the crossing interlocked, but at present we do not deem it proper to do so.

The fact that petitioner has graded its road up to the right-of-way on either side of respondent's road is not a sufficient reason in itself

for granting the prayer of petitioner—in fact it is not a good practice in cases of this character to proceed so far with the work of grading until an order from the commission prescribing the place and manner of crossing shall have first been obtained.

After a careful examination of the conditions at and surrounding the proposed crossing, we are of the opinion that a more practicable and less dangerous crossing of respondent's line could not be found than the one asked for by petitioner, and to change it to either of the points suggested by the respondents would impose additional and heavy burdens of expense upon the petitioner; and unless to do so would render the crossing less dangerous, and would less impede the business of respondent's road, then we should not make this change; therefore the prayer of the petition is granted.

It is therefore decided and ordered that petitioner have leave to cross with its tracks the tracks of respondent's road at grade at the point proposed by it, being thirteen hundred and seventy-three (1,373) feet from the center of the track of the St. Louis, Alton & Terre Haute Railroad where the same crosses the line of respondent in the city of East St. Louis, in the county of St. Clair, and twelve hundred and fifty-six (1,256) feet from the center of the crossing of the Mobile & Ohio Railroad with the tracks of the respondent in said city, the right-of-way of such crossing being first obtained under the laws of Illinois relating to eminent domain. The right to present a petition for rehearing is expressly reserved: *Provided*, same shall be filed with the secretary of the commission within five days from this date: *And, provided, further*, that counsel for petitioner shall be furnished with copy of petition within said time.

Ordered April 25, 1894.

Petition for rehearing denied May 28, 1894.

W. S. CANTRELL, *Chairman*.

CENTRALIA & CHESTER RAILROAD COMPANY

V.

LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Crossing at Nashville.

Under date of June 25, 1892, it was ordered by the Board of Railroad and Warehouse Commissioners, upon further consideration of the petition of the Centralia & Chester R. R. Company for leave to cross the tracks of the Louisville & Nashville R. R. Company, that the petitioner, the Centralia & Chester R. R. Company, shall pay the first cost of the construction and the putting up of an interlocking device, and also the expense of maintaining the same in good order, condition and repair. But the question of apportioning the expense of the operation of said plant was reserved until such time as the device to be used shall have been agreed upon by the parties, or, in case of their failure to agree, prescribed by the commission. Inasmuch as under the statutes

the companies are permitted to agree upon a plan of interlocking, provided they can do so, it was ordered that this case be held under consideration by the commission pending the efforts of the parties to agree upon a plan.

On the 14th day of June, 1893, came the parties in the above cause, by their respective solicitors, and it appearing to the commission that the parties in interest had been wholly unable to agree upon the kind of interlocking system or device to be used at the point where the Centralia & Chester R. R. Company crosses the Louisville & Nashville, and it further appeared to the commission that it is not probable that said parties will be able to agree upon said interlocking system or device for protecting said crossing, and that both parties are desirous that the commission itself shall order and determine the kind of interlocking system or device to be used in the protection of said crossing, and the said parties having signed an instrument in order that said commission could at once take action as to the kind of interlocking system or device that should be used for the protection of said crossing.

Whereupon the commission instructed their consulting engineer to view the crossing and prepare plans for an interlocking device for the protection of said crossing. Plans were prepared by the consulting engineers, approved by the commission, and forwarded to the railroad companies in interest. The general plan of the device approved being as economical as practicable, having due consideration for the statutes and the requirements of the board bearing upon this subject.

In the early part of April, 1894, information reached the commission that the order of the board directing the construction of an interlocking plant at this point was not being complied with. Investigation was made as to the facts in the case, and finding that the order was being disregarded, the commission on May 28, 1894, directed the following order issued to the Centralia & Chester R. R. Company:

To the Centralia & Chester R. R. Co.:

On the 18th day of March, 1892, in the matter of the petition of the Centralia & Chester Railroad Company for leave to cross the track of the Louisville & Nashville Railroad Company, at Nashville, Ill., an order was made by the Railroad and Warehouse Commission granting the prayer of your petition.

Afterwards, to-wit: on the 21st day of June, 1892, a further order was made by the commission requiring you, the said Centralia & Chester Railroad Company, to protect said crossing by a system of interlocking.

It has been made known to us that you have not complied with said order above referred to, and the said Louisville & Nashville Railroad Company are very much inconvenienced and their trains unnecessarily delayed by reason thereof.

Therefore, you, the said Centralia & Chester Railroad Company, will please take notice, that if you do not commence in good faith by June 15, 1894, to put in and complete (as soon as it can reasonably be done) a good and sufficient interlocking device according to the plans which

have been heretofore submitted to and approved by this commission, we shall direct the Attorney General to proceed against you for the penalty provided for in section 211 of chapter 114, Revised Statutes of Illinois.

W. S. CANTRELL, *Chairman.*

Aug. 22, 1894, report was received from the consulting engineers of the board, Messrs. R. P. Morgan & Son, approving the interlocking device (which had been put in as directed) and Aug. 29, 1894, permit for the same was issued by the secretary.

THE ILLINOIS CENTRAL RAILROAD COMPANY

V.

THE LAKE ERIE & WESTERN RAILROAD COMPANY.

Crossing at Paxton.

At a session of the Railroad and Warehouse Commission of the State of Illinois, held at its office in Springfield, Ill., on this day, present W. S. Cantrell, C. F. Lape and Thomas Gahan, commissioners, and J. W. Yantis, secretary, the following proceedings were had in this case:

And now this petition having come on for final hearing and determination before the commission, this 30th day of July, 1895, and the commission having considered the evidence taken herein, and agreements made by the parties hereto, and the arguments made before the commission, and being fully advised in the premises, doth find that the public good requires that the crossing formed at Paxton, Ill., by the Illinois Central Railroad Company and the Lake Erie & Western Railroad Company, be protected and operated by an interlocking device or machine.

It is therefore ordered by the commission that the companies, to-wit: The Illinois Central Railroad Company and the Lake Erie & Western Railroad Company, forthwith proceed to protect said crossing by a system of interlocking signals and switches, to be agreed upon by the parties, with this commission's approval, if the parties are able to agree, the cost of operation of such interlocking device to be divided upon the following basis:

First—Each company to pay the original cost of all the apparatus and mechanism used upon its own tracks, including all signals, derails, pipe lines, wire lines, boxing and all connections in its tracks, and also the cost of putting all these in ready for use, and of maintaining the same in good repair.

Second—The cost of the interlocking machine proper and the expense of maintaining the same in good working order to be divided between the companies in the proportion that the levers used to operate the appliance in the tracks of each company bear to the whole number of levers.

Third—The cost of the tower house wherein the interlocking machine is housed, to be divided between the companies in the proportion that the levers used to operate the appliance in the tracks of each company bear to the whole number of levers.

Fourth—The expense of the operation of the machine (i. e., wages of operators) to be divided equally between the companies.

It is further ordered that this petition be further held under consideration by the commission pending the efforts of petitioner and respondent to agree upon a plan of interlocking.

W. S. CANTRELL, *Chairman*;

C. F. LAPE,

THOMAS GAHAN.

Adopted July 30, 1895.

THE CHICAGO & ALTON RAILWAY COMPANY

v.

THE ALTON RAILWAY AND ILLUMINATING COMPANY.

By W. S. CANTRELL, *Chairman*.

This is a petition of the Chicago & Alton Railroad Company, asking the commission to prescribe the place where and the manner in which the respondent, the Alton Railway and Illuminating Company, may be permitted to cross with its track the track of petitioner in the city of Alton.

The petition avers that the petitioner is a railroad corporation organized and doing business under the laws of the State of Illinois, and owing and operating a railroad between the city of Chicago, in the State of Illinois, and the city of East St. Louis, in said State; that its main track runs through the city of Alton, in the county of Madison, in said State; that it has legal authority from the said city of Alton to run its railroad and its several trains upon and over Piasa st. in said city; that said street is 66 feet in width and 46 feet between the curbs; that the track of petitioner is 4 feet 8½ inches in width; that the cars of petitioner range in width from 10½ to 11 feet; that that portion of Piasa st. between Second and Third sts. is at the foot of a very heavy grade amounting to 90 foot a mile rise, and that it is very difficult to draw trains of petitioner up said grade, or to control them when coming down same; that the Alton Railway and Illuminating Company is a railroad corporation organized under the laws of the State of Illinois, and pretends to have a franchise from the city of Alton to construct and operate its line of railway from a point on Second st. to a point on Third st. in the city of Alton, along the east side of petitioner's track in Piasa st., and intends to build its track across the track of petitioner at the intersection of Third and Piasa sts. at the foot of said 90 foot grade; that said proposed crossing, if made, would be a very

dangerous one to the lives and limbs of passengers and employes of both the petitioner and the Alton Railway and Illuminating Company; that such crossing, if made at the place and in the manner proposed by the said Alton Railway and Illuminating Company, will necessarily impede and endanger the travel or transportation upon petitioner's railroad. Petitioner therefore objects to said company crossing its track at grade at the place so selected by it, and asks the commission to prescribe the place where and manner in which said crossing shall be made, having due regard to the safety of life and property.

The respondent admits in its answer the organization of petitioner; that it owns and operates a railroad as averred; its occupancy of Piasa st. by the authority of the city of Alton; the width of said street and the width of its cars, but denies that the grade on Piasa st. between Second and Third sts. is a heavy grade, and that it is very difficult to draw trains up said grade or to control them going down the same. Denies that it is a railroad corporation, but avers that it is organized under the general laws of the State of Illinois, and that the object of incorporation was and is to furnish electric light, heat and power and to maintain and operate electric street railways; that it has now in operation in the city of Alton two lines of electric railways, and that it has now in process of construction a third line extending from the city hall in the city of Alton to the village of North Alton; avers its authority by ordinance of said city to construct its line along and over Piasa st., Third st. and other streets in said city; admits that it intends and proposes to build its said electric railway track on Piasa st. along the east side of the track of the Chicago & Alton Railroad Company, and intends to cross said track of said Chicago & Alton Railroad Company at the intersection of Third and Piasa sts. Denies that said crossing will be a dangerous one either to employes or patrons of either company, and that the crossing would not injure the track of the petitioner. Denies that it intends to construct its crossing over the track of petitioner in such manner or place as will impede and endanger travel or transportation, but avers that said crossing will be at a proper and suitable place, and will be built and constructed in such manner as to be as little dangerous to life, limb or property as any crossing could, would or might be, and that the crossing proposed by it will be proper and safe. Admits that it will be at grade but denies that there is any valid or legal objection to said crossing at grade, and that the petitioner has any right under the law and facts to make objection to said crossing. The respondent joins in the request of the petitioner that the commission view the ground. Avers that the city council of the city of Alton having granted a franchise to it to lay and construct its tracks in Piasa st., it thereby acquired the right to cross the track of said petitioner; therefore the Railroad and Warehouse Commission has no jurisdiction to prevent said crossing at grade or to prescribe the place where said crossing should be.

The question of the jurisdiction of the Railroad and Warehouse Commission to hear and determine this case is raised by the answer of respondent. It is insisted that the respondent is not organized under the general railroad law, but that it is incorporated under the general

corporation act; that paragraph 102, section 38, of chapter 114, R. S., and paragraph 133, section 2, of chapter 114, R. S., expressly excepts street railroads from the operation of the respective acts. This contention is not only tenable, but is correct, and if this proceeding was under either of the acts referred to we would have no hesitancy in dismissing the petition, but this petition is brought under the act entitled, "An Act in relation to the crossing of one railway by another, and to prevent danger to life and property from grade crossings. Approved May 27, 1889; in force July 1, 1889," which provides, "that hereafter any railroad company desiring to cross with its tracks the main line of another railroad company shall construct the crossing at such place and in such manner as will not unnecessarily impede or endanger the travel or transportation upon the railway so crossed. If, in any case, objection be made to the place or mode of crossing proposed by the company desiring the same, either party may apply to the Board of Railroad and Warehouse Commissioners, and it shall be their duty to view the ground and give all parties interested an opportunity to be heard. After full investigation, and with due regard to safety of life and property, said board shall give a decision prescribing the place where and the manner in which said crossing shall be made."

There is nothing in this act which excepts street railroads. The first question for our consideration is, does the case fall within the provisions of this statute? In order to determine this we must ascertain whether or not the Alton Railway and Illuminating Company is a railroad company.

In 1859 the Supreme Court of Illinois, in the case of *Moses et al v. P., F. W. & C. R. R. Co.*, 21 Ill., 523, in passing upon the right of the appellants to enjoin appellee from laying its tracks in Beach st., in the city of Chicago, uses this language: "Cars upon street railroads are now generally, if not universally, propelled by horses, but who can say how long it will be before it will be found safe and profitable to propel them with steam or some other power besides horses? Should we say that this road should be enjoined, we could advance no reason for it which would not apply with equal force to street railroads."

Again, in the case of the city of Chicago v. *Evans et al*, 24 Ill., 56, the Supreme Court in passing upon the right of horse railways to unite their roads and make running arrangements with each other (under the act of Feb. 12, 1855), says: "The act in terms applies to all railroads organized or incorporated under or which may be incorporated or organized under the authority of the laws of this State." This language is manifestly sufficiently comprehensive to embrace horse railways as well as railroads whose cars are propelled by steam or other power, as well as roads authorized to transport passengers and freight by other power. The language of the enactment embraces all roads then organized, as well as those which might afterwards become so, and the act makes no distinction or reservation as to the character of the railroad. The members of the General Assembly were fully aware that these various roads existed, and if any roads answering either description were not designed to be em-

braced they would, it appears to us, have limited the operation of the act so as to have excluded them. Horse city railways unquestionably fall within the description of the class of subjects of which they were legislating. They are in every sense of the term "railroads."

The Supreme Court of this State, in the case in 24 Ill., above cited, says that "Horse railroads are in every sense of the term 'railroads.'" That the language of the act of 1855 is sufficiently comprehensive to embrace horse railways as well as railroads whose cars are propelled by steam or other power. If this opinion states the law correctly, then a company owning or operating a street car line propelled by horses or by any other power is a railroad company, and as such is subject to the provisions of the act known as the Crossing Act, above cited, whether such street railroad is incorporated under the general corporation laws of this State. Having disposed of the question of jurisdiction, the next question is as to the proper place where, and manner in which, the crossing shall be made. There is little conflict in the evidence as to the facts. It is admitted by the respondents that all grade crossings are more or less dangerous, but in the absence of any evidence on this point experience teaches us that all grade crossings, whether of steam, cable, electric or horse railroads, are fraught with danger even when protected by gates, bars or interlocking devices, and that however careful their management may be collisions are not infrequent.

It is said that the ordinance throws around the proposed crossing at Third and Piasa sts. all the safeguards which are necessary to protect the passengers of the respective roads, as well as their employes; but common experience has shown that howsoever strict may be the rules and regulations thrown around employes, and however much vigilance may for a time be used by them, that they have proven ineffectual to protect the lives of the passengers upon the respective roads and of the employes themselves. The employes becoming accustomed to the crossings, look upon them as common affairs and their vigilance is often relaxed and accidents occur. And, again, allowance must be made for the inattention and negligence of employes, howsoever carefully they may be selected and however stringent may be the rules under which they act. We know that they do relax in vigilance, and serious accidents occur therefrom; and it therefore becomes our duty, under the statute of this State, in so far as may be done, to put it out of the power of the employes to bring about accidents by negligence and omission of care. The safeguards of the ordinance, we apprehend, would not prove efficient to prevent accidents at the proposed crossing. Yet there are conditions which practically preclude any other than grade crossings, and when such conditions exist, the only safeguard that can be employed is to reduce the danger to a minimum by requiring such safety devices as have been discovered. But it must be borne in mind that the ingenuity of man has not yet found any device that will absolutely prevent all danger at grade crossings. The nearest approach to it is to interlock such crossings. The conditions at the proposed crossing at Third and Piasa sts. are of such a character that we feel that the danger of life would be greatly enhanced, for the reason that said crossing would be very near the foot of the 90-foot grade, and at

a point where the evidence shows that the trains of the petitioner coming down this grade have, on different occasions, become unmanageable and have gotten beyond the control of the trainmen, and were stopped quite a distance south of Third st.

Another objection to this crossing, and an additional reason why it is a dangerous one, is that the motorman or conductor could not see a train or engine on petitioner's road approaching this crossing from the south but a short distance, on account of a sharp curve in the petitioner's track just south of Second st. This last objection is obviated by the crossing prescribed by the commission, as a good view of the petitioner's tracks can be had for about one-half mile north and several hundred feet south, so that the danger of a collision at this crossing is minimized as compared with the proposed crossing at Third st. It would be far better for both roads and for the public were the physical conditions such as to admit of an overhead crossing, but they are not; therefore we can only use the authority conferred on us by law to throw all the safeguards in our power around this crossing so the lives of passengers and employés may be protected. This we have done in prescribing the place and manner of this crossing. While it is true that interlocking it will impose on the respondent additional expense, yet a question of expense should not enter into the case where the lives of the public of the employés of the petitioner and respondent are involved.

For the reason above stated we hold that the commission has jurisdiction in this case to prescribe the place and manner of crossing.

It is therefore ordered by the commission that the respondent, the Alton Railway and Illuminating Company, have leave to cross with its track at grade the track of the Chicago & Alton Railroad Company at the intersection of Piassa st. with Second st. in the city of Alton.

It is further ordered that the crossing of tracks to be thus formed be protected by a system of interlocking signals to be agreed upon by the parties, with this commission's approval, if the parties are able to agree. The cost of construction and the expense of maintenance of such device shall be paid for by the Alton Railway and Illuminating Company, as provided by statute, and it is further ordered by the commission that the cost of the operation of said interlocking device, the said Alton Railway and Illuminating Company shall pay one-half, and said Chicago & Alton Railroad Company shall pay one-half. And, inasmuch as the statute only directs the Railroad and Warehouse Commission to prescribe by order a plan of the interlocking in case the parties are unable to agree; therefore it is further ordered that this petition be further held under consideration by the commission pending the efforts of the petitioner and respondent to agree upon a plan of interlocking.

Adopted May 11, A. D. 1896.

W. S. CANTRELL,
GEO. W. FITHIAN,
THOS. GAHAN,

Commissioners.

And now on this 29th day of May, 1896, come again the parties to the above entitled proceeding, upon the petition of the Alton Railway and

Illuminating Company for a modification of the order heretofore made, to-wit: on the 11th of May, 1896, and the said cause coming on to be heard on said petition, and it appearing to the commission that the parties hereto have reached an agreement as to the mode of protecting the crossings to be made by the Alton Railway and Illuminating Company over the tracks of the Chicago & Alton Railroad Company, and it appearing that the point hereinafter mentioned, to-wit: a point fifty-one (51) feet south of the property line of Second st., is less objectionable as a place of crossing than the point heretofore ordered, and it also appearing that the Chicago & Alton Railroad Company, while not waiving its objections to any crossings at grade, prefers that the crossing, if made at all, should be made at said point, fifty-one (51) feet south of the property line of Second st., it is therefore ordered and adjudged that the order of the 11th of May, A. D. 1896, be modified in respect of the place of crossing, and also in respect of the manner of protecting said crossing; and it is also ordered that the Alton Railway and Illuminating Company have permission to cross the tracks of the Chicago & Alton Railroad Company at grade at a point fifty-one (51) feet south of the south property line of Second st. upon condition that the said Alton Railway and Illuminating Company protect said crossing by placing in their tracks the derailing device mentioned in the petition herein filed this day, and upon condition that it forever operate and maintain said protection in accordance with the petition herein made as follows: Said device shall be placed in the tracks of said Alton Railway and Illuminating Company, and of said company only, and it shall be placed on both sides of the track of the Chicago & Alton Railroad Company at a distance of fifty feet therefrom, and that said device shall be such as will keep the tracks of the Alton Railway and Illuminating Company open at all times except when a conductor or switchman of said Alton Railway and Illuminating Company shall close it for the purpose of making a crossing.

A plat of the place of crossing and a plan of the proposed crossing and derailing device are herewith filed and made a part of this order; and it is ordered that the said Alton Railway and Illuminating Company shall now and at all times strictly comply with the same, and that the permission to cross the tracks of the Chicago & Alton Railroad Company at grade at the point aforesaid be given upon that express condition.

W. S. CANTRELL,
THOMAS GAHAN.

ST. LOUIS, PEORIA & NORTHERN RAILWAY COMPANY

v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY.

Appearances—Messrs. Conkling & Grout, for petitioner; Mr. Horton, for respondent.

OPINION BY LINDLY, *Chairman*.

This is an application filed by the St. Louis, Peoria & Northern Railway Company for leave to cross at grade with its proposed track the main line and track of the Cleveland, Cincinnati, Chicago & St. Louis Railroad Company within the limits of the city of Pekin.

The hearing of this petition was first set for July 6, 1897, when it was called up, and, on motion of the respondent was continued to August 3, 1897, but afterwards set by the commission for August 10, 1897.

During this time the respondent had surveyed by its engineer a different route from the one proposed by the petitioner, running on the high land east of the proposed route mentioned in the petition, and crossing the tracks of the respondent at a point 835 feet east of the place set forth in the petition. The respondent asks that the petitioner be required to cross its track overhead at the point above mentioned.

The evidence in this shows that the proposed line of the petitioner would cross Park st., Court st., Spring st., Ridge st., Fourteenth st., Broadway and Market st. The line proposed by the respondent would cross Fourteenth st., Court st., Broadway and Market st., and would cross a park situated in that portion of the city of Pekin. The petitioner's proposed crossing would be about on the grade of the Big Four, while the grade of the proposed line, as suggested by the respondent, would take the maximum grade of the petitioner, which is 35 feet to the mile.

The evidence of the engineers of the petitioning company shows that the total cost of an overhead crossing would be in the neighborhood of \$122,120.00, and that the streets crossed by the petitioner's proposed line would have to be spanned by viaducts.

The Atchison, Topeka & Santa Fé Railroad parallels the respondent's road at the point of the proposed crossing. The Atchison, Topeka & Santa Fé Railroad Company has entered into an agreement with the petitioner permitting the petitioner to cross at grade the track of the said Atchison, Topeka & Santa Fé Railroad Company, petitioner agreeing to interlock the crossing when built.

One point to be considered in this connection is, should an overhead crossing be ordered by the commission at this point it would, also, necessitate an overhead crossing over the tracks of the said Atchison, Topeka & Santa Fé Railroad Company, and the agreement entered into between the petitioner and the said last mentioned company for a grade crossing with an interlocker could not be carried out.

The respondent avers that at this particular point of crossing there is a highway which is one of the main highways in the city of Pekin, and that it would endanger life and property to have a grade crossing at this particular point.

There can be no question but that all grade crossings of railroads or of highways are in the main dangerous, and should be avoided whenever it is practical or possible to do so without placing too great a burden upon the company constructing the same. We believe that the policy of this commission should be to order overhead crossings whenever it is possible and practicable so to do. Under the existing law of this State it is compulsory upon the company desiring to cross to pay all of the expenses of constructing said crossing and the maintenance of the same.

Section 206 Revised Statutes: "The railroad company seeking the crossing shall in all cases bear the entire expense of the construction thereof, including all costs and incidental expenses incurred in the investigation by the Board of Railroad and Warehouse Commissioners."

The cost of constructing an overhead crossing at this place would be enormous, and would have to be borne entirely by the petitioning line.

The proposed line of the respondent changes the route of the petitioner, making quite a curve south and east of the said proposed line of the petitioner, which the evidence shows would not be in keeping with the proper construction of a first-class railroad. The proposed line of the respondent proceeds along a ridge, and if this line should be varied, or the curves lessened, it would require heavy fills to reach the grade required by the crossing. On the north side of the route proposed by the respondent is high land, and the evidence shows that should the petitioner continue its route to Peoria that it would have to cross the low lands a short distance north of the proposed crossing, which would necessitate heavy fills to make their maximum grade.

In the construction of a railroad one of the most important things to the new company is the location of its depot in the city through which it runs. Should the petitioner be required to elevate its tracks over the tracks of the respondent at the proposed crossing and where they now propose to build their depot, in the city of Pekin, the petitioner's track would be at an elevation of about 20 feet, and there can be no question but that it would be very detrimental to the freight and passenger traffic of the road at the city of Pekin. The site proposed by the petitioner for its depot is as near and convenient to the business part of the city as is possible, and is a very desirable location, while the one proposed by the respondent is at some distance from the business portion of the town and not so desirable.

The evidence shows that of all the streets crossed by this company on its proposed line there are only two that are used to any great extent, these two being Court st. and Broadway, as this road runs through the outskirts of the city where these cross streets are not used very extensively, but should the overhead crossing be ordered, each of these streets would have to be bridged.

The respondent produced evidence to show that at the petitioner's proposed point of crossing there is a heavy grade of the respondent's

road, reaching 78 feet to the mile, and extending for about 6 miles, and that if the petitioner was allowed to cross at grade it would increase the operating expenses of their road, as it would necessitate the stopping of the respondent's trains on this grade, and should one of their trains break in two on that grade it would endanger life and property, even though the crossing was interlocked, the respondent claiming that an interlocking system at this place would unnecessarily impede and endanger travel and transportation of the respondent's road. The respondent's evidence upon this point was merely theoretical, not being based on actual accidents of this character, being merely statements of what might happen, and were largely imaginary.

In the decision of Mr. Phillips, a former member of this commission, in the case of the St. Louis & Eastern Railway Company v. The Toledo, St. Louis & Kansas City Railway Company, the ground is very properly taken that "the railroad first upon the ground gains important rights by the fact of its presence. The use of its line ought not to be lightly interfered with. It was undoubtedly in part the object of the act of 1889, while insuring safety to persons and property transported, to protect established companies in the enjoyment of their rights. One way of arriving at the propriety of a proposed crossing would be to consider whether the line to be crossed would have been built as it is as respects grades, curves, etc., had those building it known a crossing was to be made in the place proposed. Such a test might not be decisive, but it is worthy of consideration in every case."

There can be no question that there would not have been a difference in the construction of the respondent's road at this particular point had it known that a crossing would be established at this place, and we can not see how, with a proper interlocker at this particular point it would impede or endanger the traffic on the respondent's road, and further, this grade extends for such a distance that it would be impossible for the line of the petitioner to cross at grade any point within reasonable distance where it would not meet the same obstacles and the same grade that it does at the point proposed by the petitioner. The objection to this point could not be avoided in any possible way within six miles with a grade crossing.

The respondent sets up that the cost of the interlocker would be \$2,100.00 per year, and that amount capitalized at 6 per cent, together with the cost of constructing the interlocker, would build the entire overhead crossing. We are not prepared to say that such is the case, but we believe, if the respondent deems it fair to proceed on this basis, that it would also be fair to capitalize the cost of the annual operation of this plant to the respondent. Under the rulings of the previous boards it has been held that the road crossing another at grade must pay for the construction and future maintenance of the interlocking plant, but that the operating expenses shall be equally divided between the two roads. This being the ruling of the commission, the cost to the respondent for its share of the operating expenses of this interlocker would be about \$50.00 per month, and if we should capitalize the cost to the petitioner we ought, also, capitalize the cost to the respondent.

ent, and \$50.00 per month capitalized would be about \$10,000.00. In justice this certainly should be done if an overhead crossing is ordered, but, under the existing law, we are powerless to assess the road crossed in this manner, and until the laws are changed to that effect we must assess the entire cost of an overhead crossing to the petitioner.

It is and will be the policy of this commission to order overhead or under crossings wherever and whenever it is possible to do so, believing, as we do, that the advanced thought and system of railroad building demands it, and that the increased speed of trains and the safety of life and property require it, but where the railroad crosses the outskirts of a city, as in this case, and the cost of necessary viaducts and bridges over the highways and the roads is so immense that it would seem unjust to burden this new road with this great cost, which the commission is required to do under the statute.

For the above stated reasons, we are compelled in justice to the petitioning road in this case to permit it to cross at grade the track of the respondent.

It is, therefore, decided and ordered that the petitioner, the St. Louis, Peoria & Northern Railway Company, have leave, and it is hereby empowered, to cross with its track the main line and track of the Cleveland, Cincinnati, Chicago and St. Louis Railway Company at grade at a point near the intersection of Broadway and Fifteenth st., in the city of Pekin, in the county of Tazewell and State of Illinois. The exact point of crossing established in this decision is marked "A" on the plat filed and made a part of the petition in the above entitled cause.

It is further ordered that the petitioning road interlock the crossing at the above named point with an interlocking system in accordance with the rules and requirements of the Board of Railroad and Warehouse Commissioners of the State of Illinois, and that the cost of the construction and future maintenance thereof shall be paid by the petitioning road, and that one-half of the cost of the operating expenses of said interlocking plant at said point shall be paid by the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, the respondents herein.

It is further ordered that the petitioner pay the costs and expenses of the commission incurred under its petition.

Springfield, Ill., August 23, 1897.

ST. LOUIS, PEORIA & NORTHERN RAILWAY COMPANY

V.

PEORIA, DECATUR & EVANSVILLE RAILROAD COMPANY.

OPINION BY LINDLY, *Chairman*.

This is an application for leave to cross respondent's road at Green Valley at grade. The petition is in the usual form and is based on the

provisions of the statute as provided in the 6th paragraph of section 19, of chapter 114, of the act of March 1, 1872, concerning railroads. Petition also asks that the commission enter an order fixing the place of said crossing at grade and to provide a proper device and appliance for the protection of said crossing in pursuance of an act entitled, "An act to protect persons and property from danger at the crossings and junctions of railroads by providing a method to compel the protection of the same," in force July 1, 1891.

Respondent has filed its answer herein denying that the place at which petitioner seeks to cross respondent's track is a proper and safe place for such crossing, and that a crossing at grade at such place will unnecessarily impede and endanger the travel and transportation upon respondent's road, alleging that an overhead crossing would obviate such danger and the delay and impeding of travel and transportation incident to such grade crossing, and that such overhead crossing can be constructed at a reasonable expense to petitioner. Respondent offered on the trial of this cause to depress its track four feet at its own expense, in the event that an overhead crossing is ordered.

It is contended by counsel for petitioner that the right or power in the Board of Railroad and Warehouse Commissioners in this State to order an overhead or underneath crossing where one road proposes to construct its line of track across another already constructed and in operation, is doubtful. Under the constitution the right of petitioner to condemn its right-of-way across the respondent's road can not be denied, and any statute which would deny that right would be in contravention to the constitution and the provisions of the act of 1872 permitting the construction and uniting of one road with another, with proper turn-outs, etc., is in full force and effect. In construing the various acts of the Legislature on the subject of railroad crossings in this State, passed since the adoption of the constitution of 1870, there is, in the opinion of the commission, no conflict whatever.

Under the act entitled, "An act in relation to the crossing of one railroad by another, and to prevent danger to life and property from grade crossings," in force July 1, 1889, the commission is expressly clothed to prescribe "the place where and the manner in which said crossing shall be made." But with the question of compensation for property actually taken for such crossing, and the damages resulting therefrom, the commission has nothing to do. Those questions are to be determined under the laws of eminent domain, and this statute does not in any way conflict with the constitution or any statute on the subject of railroad crossings in this State. The act of 1891 was passed for the purpose of furnishing means of protection to grade crossings on railroads already constructed and in operation, and on such railroads as shall hereafter cross each other at grade, but this statute does not conflict in any way with the act of 1889. The acts of 1872 and 1891 do not give an absolute right in one road to cross the main line of another at grade. When a proper case is brought before this commission, raising the question as to the place and manner that a proposed line of railroad shall cross the main line of another railroad already in operation, this commission has full

power to prescribe an overhead or underneath crossing if, in their opinion the facts warrant such an order. The act of 1889 was passed expressly for this purpose. The language of the statute is broad, and, while the words overhead or underneath are not expressly used, much broader and more comprehensive language is used.

The danger to life and property from grade crossings has been frightfully demonstrated in this State, and no ingenuity of man has yet found a device or appliance that will absolutely prevent all danger at grade crossings.

With the number of railroads in operation in the State of Illinois, carrying, as they do, thousands of people daily, and recognizing, as we must, that however strict the rules and regulations thrown around employes, and however much vigilance they may exercise, they have proven ineffectual to protect the lives of passengers and of the employes themselves. The trainmen become accustomed to these grade crossings and look upon them as common affairs, and trains are run at high rates of speed over these crossings provided with interlocking devices, and fearful accidents have occurred. This is a matter of common experience. Private inconveniences and cost must yield to public necessity, and, while the cost of an overhead crossing in this case will be much larger than a grade crossing, yet the protection to life and property require it.

The present Railroad and Warehouse Commission has fully determined, where physical conditions will permit, and in proper cases, not to order grade crossings in the construction of new lines of railroads within this State. The lives of the traveling public and of the employes of the many railroads operating in this State are more to be considered than the mere question of cost.

The petition and answer filed in this case, and the evidence taken bring this case under the provisions of the act of 1889.

It appears from the evidence submitted in this case that the Peoria, Decatur & Evansville Railway Company operates ten trains daily, that is, five each way, over its line at the point of the proposed crossing. It further appears from the evidence that from the location of the side track of the respondent at Green Valley that trains approaching from the southeast that desire to head in on the side track would have to stop on the crossing, if a grade crossing should be permitted. It further appears that the physical conditions are such that an overhead crossing can be constructed at an estimated cost of \$20,000.00.

The commission therefore finds that, with due regard to the safety of life and property, it will be necessary to construct an overhead crossing at the crossing of said railroads.

The commission further finds that a grade crossing at this point, and in the manner provided by the petition, would impede and endanger travel and transportation at said point on the Peoria, Decatur & Evansville Railroad.

It is hereby ordered and adjudged that the petitioner, the St. Louis, Peoria & Northern Railway Company, have leave, and is hereby empowered, to cross with its tracks the main line and track of the respondent the Peoria, Decatur & Evansville Railway Company, by an overhead

crossing, leaving twenty-two feet in the clear, that is, the lower part of the superstructure of the said overhead crossing shall be twenty-two feet above the top of the rails of the said Peoria, Decatur & Evansville Railway Company. The measurement to commence at the top of the rails of the said respondent, the Peoria, Decatur & Evansville Railway Company, after the said respondent shall have depressed its track four feet, according to the agreement of the receiver of said road made in this cause.

Th point of crossing shall be fifteen feet, more or less, west of the north and south center line of section 35, township 23 north, range 5 west of the 3d P. M., in the county of Tazewell, in the State of Illinois, more clearly shown by the plat, marked "Exhibit One," filed by the respondent in this cause.

It is further ordered and adjudged that the said petitioner shall pay all the cost of the construction and future maintenance of said crossing.

It is further ordered that, according to the agreement made by the said Peoria, Decatur & Evansville Railway Company, in this cause filed, that the said Peoria, Decatur & Evansville Railway Company depress its tracks four feet at the point of the above mentioned crossing at its own expense.

It is further ordered that the petitioner pay the cost and expenses of the commission incurred under its petition.

It is further ordered that permission be, and the same is hereby, granted to the said petitioner, the St. Louis, Peoria & Northern Railway Company, to construct at grade temporary tracks and crossings to be used, if necessary, for the construction of the overhead crossing in this order described. Said temporary tracks and grade crossings to be removed within one year from the date of this order.

It is further ordered that this petition be further held under consideration until the completion of said overhead crossing and the removal of said temporary tracks and grade crossings aforesaid.

Springfield, Ill., Aug. 23, 1897.

This order for an overhead crossing was vacated and a grade crossing allowed petitioner, no reason for such action being given except that respondent did not object to vacating the order.

See post for vacating order.

ILLINOIS CENTRAL RAILROAD COMPANY

v.

PEORIA, DECATUR & EVANSVILLE RAILWAY COMPANY.

Appearances—Colonel Gwin, representing petitioner; Mr. Horton, for respondent.

OPINION BY LINDLY, *Chairman*.

This is a petition for the protection of the crossing of the Illinois Central Railroad Company and the Peoria, Decatur & Evansville Railway Company, at Mattoon, Ill.

Petition by the Illinois Central Railroad Company was filed, and answer made thereto by the respondent, the Peoria, Decatur & Evansville Railway Company. Petition is filed under the provisions of the present statute governing interlocking devices. The evidence has been heard, and the commission has made an examination of the crossing in question.

It is contended that, by virtue of a contract heretofore made by the Grayville & Mattoon Railroad Company with the petitioner, the Illinois Central Railroad Company, that the respondent should pay the cost of constructing, maintaining and operating said interlocking system. The contract was made at the time of the crossing by the Mattoon & Grayville Railroad of the Illinois Central Railroad, since which time the respondent has succeeded to the right of the said Mattoon & Grayville Railroad Company.

We have carefully examined the briefs filed by the petitioner and the respondent, and the law governing the contract in question. The contract provides that the Mattoon & Grayville Railroad Company should erect and maintain gates and supply watchmen at said crossing.

The petition for an interlocker, under our present statute, in no way could be controlled or regulated by the contract in question. We are further of the opinion that the covenants in said contract would not be binding upon the respondent, the Peoria, Decatur & Evansville Railroad Company, so far as it affects the question involved in the constructing and maintaining of an interlocking system at the crossing in question.

As to the right of the Illinois Central Railroad Company to maintain an action against the Peoria, Decatur & Evansville Railway Company under the contract in question, to compel the respondent to maintain gates and watchmen at said crossing, we express no opinion. The question does not arise in this proceeding.

We are of the opinion that an interlocking system should be constructed, maintained and operated at the crossing in question for the safety of the public.

It is, therefore, ordered by the commission that the said companies, to-wit: the Illinois Central Railroad Company and the Peoria, Decatur & Evansville Railway Company forthwith proceed to protect the said railroad crossing at Mattoon, Ill., by an interlocking system acceptable to the commission.

It is further ordered by the commission that each of said railroad companies shall pay such proportion of the cost of constructing, erecting and maintaining the said interlocking system, and all thereto appertaining, as the number of levers that shall operate the switches, signals and other parts of the said interlocking system in and for the respective tracks of the said companies shall bear to the whole number of levers required in said interlocking system, and each of the said companies shall pay one-half the cost of operating the said interlocking system.

It is further ordered by the commission that this petition be held under consideration by the commission pending the efforts of the peti-

tioner and respondent to agree upon a plan of interlocking, for which purpose they shall be allowed a period of sixty days from and after this date.

Adopted Jan. 4, 1898.

ST. LOUIS, PEORIA & NORTHERN RAILWAY COMPANY

v.

PEORIA, DECATUR & EVANSVILLE RAILWAY COMPANY.

Appearances—Messrs. Conkling & Grout, for petitioner; Stevens & Horton, for respondent.

Crossing at Green Valley.

This application having come on to be further heard upon the petition of the St. Louis, Peoria & Northern Railway Company for a vacation of the order entered herein Aug. 23, 1897, whereby it was ordered that an overhead crossing be constructed at the place indicated in the original petition, and that in lieu thereof the said petitioner be allowed to cross with its track the main line and track of the respondent at grade, and the commission having heard the evidence, and the respondent not objecting to the change in said original order, as prayed: It is therefore ordered and decided that the original order entered herein Aug. 23, 1897, requiring the construction of an overhead crossing at the place described in said petition be, and the same is hereby, vacated.

It is further ordered and decided that the petitioner, the St. Louis, Peoria & Northern Railway Company, have leave to cross with its track at grade the track of the respondent, Peoria, Decatur & Evansville Railway Company, at the place specified in the original petition on file in this cause, right-of-way for such crossing being first obtained by agreement, or in the manner provided by law, in case the parties hereto fail to agree.

It is further ordered that the crossing of tracks to be thus formed be protected by a system of interlocking signals and switches to be agreed upon by the parties, with this commission's approval, if the parties are able to agree, the first cost of such interlocking machine, the expense of putting the same in, the expense of maintaining the same in good order and repair, and all other expenses and cost of such interlocking appliances, and of putting in, and the future maintenance thereof, and also all present and future expenses of the operation of said plant, to be paid for by the said St. Louis, Peoria & Northern Railway Company, its successors and assigns. Neither the Peoria, Decatur & Evansville Railway Company, nor its receiver, nor any purchaser or future owner of its property, to be at any expense, present or future, touching the construction, maintenance, operation, or otherwise, of said interlocking plant or appliances.

It is further ordered that this petition be held under consideration by the commission pending the efforts of petitioner and respondent to agree upon a plan of interlocking.

It is further ordered that said interlocking plant should be fully completed and in operation by or before Jan. 1, 1899.

ILLINOIS CENTRAL RAILROAD COMPANY

V.

CHICAGO & EASTERN ILLINOIS RAILROAD COMPANY, AND INDIANA,
DECATUR & WESTERN RAILWAY COMPANY.

Appearances—John C. Drennan, for petitioner; Will H. Lyford, for C. & E. I. R. R. Co.; for I., D. & W. Ry. Co.

OPINION BY LINDLY, *Chairman*.

This is a petition for the protection of the crossing of the Illinois Central Railroad Company's tracks and those of the Chicago & Eastern Illinois Railroad Company's and the Indiana, Decatur & Western Railway Company's tracks, at Tuscola, Ill.

Petition was duly filed and notice given to the said defendants, as required by the statute of Illinois.

At 10:00 o'clock a. m. this day, all parties interested, by their respective representatives, appeared at the office of this commission, at which time and place a full hearing was given to each and all of said parties.

And after hearing the evidence and argument on behalf of the respective parties, and being fully advised in the premises, the said commission finds:

That an interlocking device is a public necessity at the said railroad crossing, and that an interlocking system should be constructed, maintained and operated at the same.

That a continuing crossing contract exists between the petitioner and the Chicago & Eastern Illinois Railroad Company, but that no such contract exists between the petitioner and the other defendant, or between the said defendants.

It is therefore ordered by the said commission that the said petitioner and the said defendants forthwith proceed to protect the said railroad crossing at Tuscola, Ill., by an interlocking device acceptable to said Railroad and Warehouse Commission, and that the same shall be completed within ninety days from this date.

It is further ordered by said commission that each of said railroad companies shall pay such proportion of the cost of constructing, erecting and maintaining the said interlocking system and its appurtenances, and the number of levers used in operating the switches, signals and

other parts of said interlocking system in and for the respective tracks shall bear to the whole number of levers required in said interlocking system.

It is further ordered by the said commission that the Indiana, Decatur & Western Railway Company shall pay one-third of the cost and expense of operating the same; that the Chicago & Eastern Illinois Railroad Company shall, owing to its said crossing contract with the petitioner, pay the remaining two-thirds of the cost and expense of operating the same, so long as said two-thirds shall not exceed \$70.00 per month, but in case said two-thirds shall at any time exceed \$70.00 per month, then the said Illinois Central Railroad Company shall pay one-half of such excess over and above said \$70.00 per month.

Dated at Springfield, Ill., this 3d day of May, A. D. 1899.

ST. LOUIS, VANDALIA & TERRE HAUTE RAILROAD CO.

v.

INDIANAPOLIS, DECATUR & WESTERN RAILWAY CO.

Appearances—T. J. Golden, for petitioner; G. H. Graves, for respondent.

OPINION BY LINDLY, *Chairman*.

This is a case brought by the St. Louis, Vandalia & Terre Haute Railway Company asking for the interlocking of a crossing at Casey, Ill., where the Indianapolis, Decatur & Western Railway Company crosses the St. Louis, Vandalia & Terre Haute Railroad Company at grade. The petition of the latter company was filed and the required notice under the statute given to the officials of the Indianapolis, Decatur & Western Railway Company, and a day set for hearing the case at the office of the Railroad and Warehouse Commission at Springfield. Prior to the hearing of the case the representatives of the contending lines entered into an agreement with one another in regard to the cost of the erection, maintenance and operating expenses of the said interlocking system at said point.

The order of the board will be in compliance with the agreement as signed by the representatives of these companies. That as soon as possible an interlocking device shall be erected at the crossing of the said railways at Casey, Ill., and that the cost of erecting the machine and tower shall be divided between the two companies on the basis of levers used by each. That the expenses of the erection and maintenance of said interlocking plant shall be divided on a basis of levers used by each company on a plan to be finally approved by the Railroad and Warehouse Commission of Illinois.

It is further ordered that the operating expenses be divided between the companies, one-half to each, with the understanding that so long as the Vandalia is able to use its telegraph operators at that point to throw

the levers that the wages of these operators shall be charged one-half to the Vandalia Company and one-half to the tower. The one-half chargeable to the tower shall be divided between the said railroad companies, half and half to each.

It is further ordered that any changes made in the switches at this crossing, or changes in the track of either of the lines for the purpose of lessening the number of levers used, shall be submitted to the Railroad and Warehouse Commission for their approval before the interlocking device is erected.

It is further ordered that if at any time either of said railroads should desire to add to its tracks in such a manner as to require additional levers to the tower, the company making such additions to its road shall be required to pay the entire cost of such changes as are made with the approval of the Railroad Commission.

Dated at Springfield, Ill., this 2d day of August, A. D. 1899.

IN RE INTERLOCKING DEVICES.

ORDER BY LINDLY, *Chairman*.

After having careful examinations made and heard reports bearing on the use and safety of the old style wheel interlocking machines that have been in use in this State, and in service varying from nine to ten years, it is the opinion of the commission that their use is unreliable and unsafe, and, it is therefore

Ordered and decreed that such railroad corporations as use them, or who may be responsible for their use at grade railroad crossings in this State, replace said wheel machines with better and more modern devices by July 1, 1900:

Dated at Springfield, Ill., this 7th day of November, A. D. 1899.

ILLINOIS TRANSFER RAILROAD COMPANY

V.

LOUISVILLE, EVANSVILLE & ST. LOUIS CONSOLIDATED RAILROAD
COMPANY.

Appearances—For petitioner, J. M. Hamill; for respondent, W. L. Taylor, J. D. Wellman, E. C. Kramer.

OPINION BY LINDLY, *Chairman*.

This is a petition filed on behalf of the Illinois Transfer Railroad Company to cross the tracks of the Louisville, Evansville & St. Louis Consolidated Railroad Company in Winstanley Park, a short distance east of the city limits of East St. Louis in St. Clair county, Ill.

The petition was filed Nov. 15, 1899.

The hearing of this petition was set for Tuesday, Dec. 19, 1899, when it was continued on motion of the respondent until Friday, Jan. 12, 1900, at which time the case was partially heard, and continued by agreement to Friday, Jan. 26, 1900, at which time the trial was concluded.

The evidence in this case shows that the proposed line of the petitioner would cross the main track and side track of the Louisville, Evansville & St. Louis Consolidated Railroad at the place where the main track of the Louisville, Evansville & St. Louis Consolidated Railroad is located upon Survey One Hundred Twenty-six (126) of the common fields of Cahokia, in the village of Winstanley Park, in St. Clair county, Illinois; the center lines of the two proposed tracks of the said Illinois Transfer Railroad to be laid across the main track and side track of the Louisville, Evansville & St. Louis Consolidated Railroad at grade, being respectively six and one-half ($6\frac{1}{2}$) feet on each side of the northeasterly prolongation of the center line of Pueblo st., as established through the subdivision of Denverside, in Centerville Station township, St. Clair county, Illinois, (as said street is shown and designated in Plat Book F, page 40 of the records of St. Clair county, Illinois), if said Pueblo st. were extended across the right-of-way of the said Louisville, Evansville & St. Louis Consolidated Railroad. The description of said proposed crossing being more particularly described on a certain plat introduced in evidence marked Exhibit "A," which plat is made a part of this order.

The evidence further shows that the Illinois Transfer Railroad Company is a railroad corporation, incorporated and organized under the laws of the State of Illinois for the purpose of building, maintaining and operating a belt or connecting railway, with a single or double track to connect with all of the railroads running from the east, north or south through Madison or St. Clair counties, in the State of Illinois, as described in said petition.

It further appears from the evidence in this case that the said Illinois Transfer Railroad Company will cross with their tracks the tracks of the Vandalia Railroad, the Baltimore & Ohio Southwestern Railroad, the St. Louis & O'Fallon Railroad and the Louisville & Nashville Railroad.

It further appears from the testimony that the said Illinois Transfer Railroad Company has by agreement with the various roads aforesaid obtained the written consent of said roads to cross the tracks of the same at grade and make proper connections with the main tracks of said roads for the purpose of operating a belt railroad.

It is contended by respondent that another corporation pretending to be incorporated and organized under the laws of the State of Illinois for the purpose of building a track upon the route described in said petition and prior to the time of the incorporation of the Illinois Transfer Railroad Company had already laid down a single track on part of the route described and set forth in petitioner's petition.

It appears from the testimony in this case that prior to the incorporation of the said Illinois Transfer Railroad Company, that there was incorporated a railroad company under the name of the East St. Louis Belt Railroad Company, and that they had acquired certain right-of-way and constructed a portion of the track on the right-of-way acquired

under this title. It further appears that said railroad had not been completed or operated by the said East St. Louis Belt Railroad Company, but had been partially graded and constructed.

It appears from the testimony that the said Illinois Transfer Railroad Company, after its said incorporation, acquired all the rights, franchises and property of the said East St. Louis Belt Railroad Company, and was at the time of the filing of the petition in this case, the sole owner of the right-of-way, franchises and property of the said East St. Louis Belt Railroad Company, and had full right to file the petition herein; and the contention of respondent that this was the acquiring or consolidation of parallel lines of railroad as set forth in the statutes of the State of Illinois is not supported either by the testimony or under the law, for it simply amounted to acquiring by the Illinois Transfer Railroad Company of the property and franchises of the East St. Louis Belt Railroad, which at the time of such acquirement was neither constructed nor in operation, and the rule as to the parallel lines of railroads, contended for by respondent, has no application whatever under the facts in this case; and the right of the Illinois Transfer Railroad Company to acquire from the East St. Louis Belt Railroad Company their right-of-way, franchises, etc., can not be denied under the law.

It further appears from the testimony that the original right-of-way of the said Louisville, Evansville & St. Louis Consolidated Railroad Company at the point of the proposed crossing is one hundred and ten (110) feet wide. It is only shown upon the map introduced in evidence to be one hundred (100) feet wide, but according to the evidence it appears to be one hundred and ten (110) feet wide at that point. Under the statute providing for the crossing of one railroad with another, it is provided under "An act in relation to the crossing of one railroad by another, and to prevent danger to life and to property from grade crossings," approved May 27, 1889; in force July 1, 1889, section 205: "That hereafter any railroad company desiring to cross with its tracks the main line of another railroad company, shall construct the crossing in such manner and at such place as will not necessarily impede or endanger the travel or transportation upon the railway crossed; if in any case objection be made to the place or mode of crossing proposed by the company desiring the same, either party may apply to the Board of Railroad and Warehouse Commissioners, and it shall be their duty to view the ground, and give all parties interested an opportunity to be heard; after full investigation and with due regard to safety of life and property, said board shall give a decision prescribing the place where and the manner in which said crossing shall be made, but in all cases the compensation to be paid for property actually required for the crossing, and all damages resulting therefrom, shall be determined in the manner provided by law in case the parties fail to agree."

It appears from the evidence in this case that in March, 1899, under certain proceedings in the United States Circuit Court, had by the receiver of the said respondent railroad company, he was authorized to purchase a certain strip of ground two hundred (200) feet wide part of the distance and two hundred and eighty (280) feet wide at another por-

tion, being at the point in question, and three hundred (300) feet at another point, with a total length of five thousand six hundred and twenty-eight (5,628) feet lying along the side of and adjacent to the right-of-way of the main line of said Louisville, Evansville & St. Louis Consolidated Railroad Company at the point of the proposed crossing, which said right-of-way of said main line at the point of said proposed crossing is one hundred and ten (110) feet, making a total width at said proposed point of crossing of three hundred and ninety (390) feet.

At the time the petition in this case was filed and at the time the crossing was viewed by the Railroad and Warehouse Commission three (3) or more certain tracks had been laid upon ties, without any grading or surfacing of the same, upon the strip of ground so purchased as aforesaid, which tracks are totally disconnected at either end with the main or side track of the said Louisville, Evansville & St. Louis Consolidated Railroad at the point of said crossing, or at any point whatever. It is insisted that it is the intention of the respondent railroad company to use the strip of ground so purchased for yard purposes, and that, in passing upon the question of the crossing of the tracks of the Illinois Transfer Railroad Company over the tracks of the respondent railroad company, that the commission should take into consideration said tracks so laid upon said strip of ground, and also the additional fact that it is intended to use said strip of ground and said tracks so laid upon said strip of ground for yard purposes.

The inquiry of the commission under the statute is limited to the crossing of the main line of one railroad company with another, and does not extend beyond the original right-of-way or main track and connecting tracks at the time said petition was filed. The commission cannot enter into the field of the probable intention of respondent as to the use they desire or propose to make of the strip of ground in question. The damages arising to the respondent railroad company from the crossing of the main track and side track, as well as the crossing of the other tracks on the strip of ground in question, are questions that will have to be settled under the Eminent Domain Act, which this commission cannot consider. Under this statute the commission is only to determine the place and mode of crossing, and all questions of damages are to be determined under proper condemnation proceedings. It is no doubt true, that if the respondent railroad company was operating a yard at the point in question, that the commission would consider the number of tracks and yard in question in passing on the question of a grade or overhead crossing, so far as it affected safety to life and property, and so far as it would necessarily impede and endanger the travel or transportation upon the railway so crossed, but for the commission to enter into any future use that is proposed to be made of the property in question would not be proper under the law, for the reason that the respondent railroad company could change its intention at any moment and abandon the proposed use of the property in question. The commission must deal with the status of the property as it exists at the time the petition was filed and the hearing had.

The object and purposes of the building of the road in question, the Illinois Transfer Railroad Company, is to furnish terminal facilities for the various roads entering the city of East St. Louis, and, also, as appears from the evidence, to furnish shipping facilities to large industries situated along the line of the proposed route of the road in question. In order that the object and purposes of this road may be carried out, and these facilities furnished, it is necessary that they be allowed to unite and connect with the roads which they cross. Under the statute of this State it becomes the duty of the Railroad and Warehouse Commission to permit one railroad crossing another to unite and connect its tracks with such roads so crossed, in order that shipping facilities may be furnished to each of the said roads. In this case, by agreement, the principal trunk lines entering the city of East St. Louis crossed by this road, with the exception of the respondent company, agreed with the terminal road in question for the crossing of their said tracks at grades, and the uniting and connecting of the same in order that terminal facilities may be furnished by the Illinois Transfer Railroad Company.

It is contended that because the respondent railroad company is operating a belt or terminal railway, that such fact ought to be taken into consideration in passing upon the question of the proposed crossing. And it is further insisted that the present terminal facilities furnished by the respondent railroad company is sufficient and ample. It is sufficient to say that it is the object and purpose of the law to give the best opportunity and facilities for railway shipment. That has been the policy pursued by the State of Illinois for years. To hold otherwise would be to say that no competing lines could be built and no additional terminal facilities could be added in the city of East St. Louis. We cannot so hold and the law cannot be so construed.

It is further contended that the place of crossing should be changed and carried to the east end of the property acquired by the respondent railroad company, which would cause the road in question to build and acquire the right-of-way two miles distant. This only could be urged by a competing line, and cannot be considered reasonable under the evidence in the case.

It is also urged that it might be well for this road to run at the west end of the strip of ground acquired by the respondent railroad company, but it is in evidence that if such change should be made by the commission, that it would destroy all connecting facilities with the Shickle-Harrison-Howard Iron Company, which is the largest manufacturing establishment on the line of road in question. It does not come within the province of this commission to make changes in the proposed location of a crossing, the effect of which would be to destroy connections with manufacturing establishments which desire terminal facilities simply for the convenience of a competing line that seeks to destroy the building of a road which proposes to furnish facilities equal to theirs.

We cannot but repeat what we said in a former decision, that there can be no question "but that all grade crossings of railroads or of highways are in the main dangerous, and should be avoided whenever it is

practicable and possible to do so without placing too great a burden upon the company constructing the same. We believe that the policy of this commission should be to order overhead crossings whenever it is possible and practicable to do so."

Or, in another case, where we said: "That it is and will be the policy of this commission to order overhead or under crossings wherever and whenever it is possible to do so, believing as we do that the advanced thought and system of railroad building demands it, and that the increased speed of trains and the safety of life and property require it."

And we still insist that private inconvenience and cost must yield to public necessity.

But in this case there is a material difference between the cases referred to and the case at bar. The road seeking to cross in this case is a belt line carrying no passengers, and being built for the purpose only of connection with the main arteries of traffic entering the city of East St. Louis, carrying no passengers and doing a freight business only. Their trains are run at all times under control, and we believe, as we have insisted from the origin of this commission, that in cities overhead crossings are not only expensive to the road crossing, but are destructive of the value of property abutting the same, and inconvenience, in this case particularly, to the manufacturing industries situated along the line. It can not therefore be urged that this commission is in any way deviating or abandoning the policy set forth in former decisions, in saying, that this belt road constructed for the purpose of carrying freight only, shall go at grade in this particular case.

It is therefore ordered and decreed that the petitioner, the Illinois Transfer Railroad Company, have leave and it is hereby empowered and ordered to cross with its tracks the main line and track and connecting track of the Louisville, Evansville & St. Louis Consolidated Railroad Company at grade, and connect and unite their tracks with the same, at a point described and set forth in this decision, and as marked and designated on the plat attached hereto and made a part of this decision, marked Exhibit "A."

(Plat referred to herein on file in office.)

It is further ordered that the petitioning road interlock the crossing at the above named point with an interlocking system, in accordance with the requirements of the Board of Railroad and Warehouse Commissioners of the State of Illinois, and that the cost of construction and future maintenance thereof shall be paid by the petitioning road, and that the operating expenses shall be divided between the roads as follows:

The road seeking to cross, viz: The Illinois Transfer Railroad Company shall pay three-fourths ($\frac{3}{4}$) of the operating expenses and the Louisville, Evansville & St. Louis Consolidated Railroad Company one-fourth ($\frac{1}{4}$).

Dated at Springfield, Ill., this 6th day of February, A. D. 1899.

CHICAGO & ALTON RAILWAY CO.

V.

CHICAGO, PEORIA & ST. LOUIS RAILWAY CO. OF ILLINOIS—
BRIDGE JUNCTION, EAST ST. LOUIS.

Crossing at Bridge Junction, St. Clair county.

This cause comes before the commission on the objection of the Chicago & Alton Railway Company to the crossing of their tracks at grade by the Chicago, Peoria & St. Louis Railway Company. Objection was made July 23, 1901. Notice sent to the Chicago, Peoria & St. Louis Railway Company on that date. Place of crossing viewed July 30, 1901. Case continued at request of Chicago, Peoria & St. Louis Railway Company to Sept. 7, 1901. At that time it was learned that the Chicago, Peoria & St. Louis Railway Company had gone ahead and finished up the crossing and was using it. Hearing had in the office of the Railroad and Warehouse Commission, at Springfield, on that date, and continued for decision until Nov. 8, 1901. Further hearing on said date. The Chicago, Peoria & St. Louis Railway Company on that date filed a motion to dismiss the proceedings for want of jurisdiction, which motion was overruled, for the reason that it came too late, the case having been heard without objection up to that time. Cause continued until Nov. 19, 1901, and all parties met at Bridge Junction for the purpose of trying to make a final settlement. All parties interested were present and the board notified the parties interested that they would require an overhead crossing. Cause continued until Dec. 3, 1901, to allow railroads to present plans for the overhead crossing, at the regular meeting of the Railroad and Warehouse Commission at their office at Springfield.

The proposed crossing crosses from east to west over the Wabash Railroad, the Cleveland, Cincinnati, Chicago & St. Louis Railroad, the Terminal Railroad Association, at St. Louis, and the Chicago & Alton Railroad, all of which are main tracks of the above mentioned roads. The point where this road crosses the terminal is at, or near, where the other three railroads connect with the Terminal with their passenger trains going into and coming out of St. Louis over the Eads bridge, the larger portion of the passenger business going into St. Louis over the Eads bridge and the Terminal tracks from the north.

The Chicago, Peoria & St. Louis Railroad Company have recently built a new freight house, and are building several miles of switches and tracks in their yard, directly west of where this proposed crossing is. They are elevating all the tracks from seven (7) to twenty (20) feet above the natural surface of the ground, and in our opinion there will be no trouble for them to elevate the one track to such a distance that they can cross over the above mentioned tracks by an overhead crossing, and in that way save all danger of collision at the grade crossing.

The Chicago, Peoria & St. Louis Railway are doing the switching across their track, as now located, for the Illinois Central Railroad Company as well as for themselves, and they themselves have yards on

each side of the proposed crossing, where there is a constant switching back and forth from one yard to the other, and which is necessarily very dangerous by reason of the great number of trains crossing their tracks at this point, and will unnecessarily impede and endanger the travel and transportation over the Chicago & Alton Railway track.

It is claimed by the Chicago, Peoria & St. Louis Railway that it would be a great hardship on them to have to erect and maintain an overhead crossing. This, of course, is true; but when we consider the great number of accidents at grade crossings, the great expense of putting in and maintaining interlockers, we are of the opinion that within the next ten years, if the said company erect and maintain an overhead crossing, they will have saved more than sufficient money to pay the entire cost of said overhead crossing, by reason of having no accident and no flagman or lockmen to pay. Therefore, in view of the above facts,

It is hereby ordered by the board that the Chicago, Peoria & St. Louis Railroad Company have leave to cross the track of the Chicago & Alton Railway Company at Bridge Junction, where their tracks have been placed since the beginning of this proceeding, with the overhead crossing; that the said overhead crossing shall leave twenty-two (22) feet in the clear from the top of the rails of the Chicago & Alton Railway Company to the lower part of the superstructure of the said overhead crossing of the Chicago, Peoria & St. Louis Railway Company.

It is further ordered that the said Chicago, Peoria & St. Louis Railway Company shall pay the entire cost of the construction and future maintainance of said crossing.

It is further ordered that the Chicago, Peoria & St. Louis Railway Company pay the cost and expenses of the commission incurred upon this petition.

It is further ordered that the Chicago, Peoria & St. Louis Railway Company be permitted to use the tracks which have been put in by them since the commencement of this proceeding, and after this commission has taken jurisdiction of this case, for the purpose of carrying material across the tracks of the Chicago & Alton Railway Company to raise their grade sufficiently for the approaches to the crossing over the Chicago & Alton Railway Company, provided such use shall not exceed three (3) months from the date of this order. And that this case is continued until the regular meeting of this commission on the first Tuesday after the first Monday of March, 1902.

Dated at Springfield, Ill., Dec. 3, 1901.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY

V.

ALPHEUS P. GODDARD, ALPHEUS J. GODDARD AND THE FREEPORT GENERAL ELECTRIC COMPANY.

Appearances—C. B. Keeler, attorney for complainant; Alpheus P. Goddard, for defendants.

OPINION BY JAMES S. NEVILLE, *Chairman*.

This was a petition filed by the Chicago, Milwaukee & St. Paul Railway Company, alleging that defendants were a railroad company, and that they were attempting to cross their tracks on Shawnee st., near the eastern limits of the city of Freeport, with a railroad track at grade; and that they objected to such crossing, and asked that the commission view the proposed crossing and decide what was the proper place and mode of crossing for said defendants.

Petition sets up that the defendants are common carriers for the transportation of passengers and freight on their railroad, to be operated by electric power in and through the city of Freeport, and over the proposed crossing of the Chicago, Milwaukee & St. Paul Railway on said Shawnee st.

Commission viewed the proposed place of crossing, with complainant's attorney and superintendent, and Alpheus J. Goddard, defendant, on Nov. 21, 1901.

The case was set for trial Dec. 5, 1901, in the office of the Railroad and Warehouse Commission, in Chicago, and defendants notified.

December 4, 1901, the defendants, Alpheus P. Goddard and Alpheus J. Goddard, filed in the office of the Railroad and Warehouse Commission at Springfield, the following plea:

"The above named defendants, Alpheus P. Goddard and Alpheus J. Goddard, for answer to the complainant in this proceeding, respectfully state:

First—That they deny that the said Railroad and Warehouse Commission of the State of Illinois have any jurisdiction in the premises.

Second—That said defendants say that they have a meritorious defense to the said petition, and save all the rights thereof the same as if the same had been set forth. Wherefore the defendants pray that the complaint be dismissed.

It must be contended by the defendants, under their plea to the jurisdiction, that the Railroad and Warehouse Commission have no jurisdiction over electric railroads, or that the defendants are not a railroad company within the meaning of the statute.

The statute provides that hereafter any railroad company desiring to cross with its tracks the main line of another railroad company shall construct the crossing at such a place and in such a manner as will not unnecessarily impede or endanger the travel or transportation upon the

railroad so crossed. If, in any case, objection is made to the place or mode of crossing proposed by the company desiring the same, either party may apply to the Board of Railroad and Warehouse Commissioners, and it shall be their duty to view the ground, give all parties interested an opportunity to be heard, and after full investigation, with due regard for the safety of life and property, the board shall give a decision, describing the place where and the manner in which said crossing shall be made. But in all cases the compensation to be paid for the property actually required for the crossing, and all damages resulting therefrom, shall be determined in the manner provided by law, in case the parties fail to agree.

It cannot, under our view of this case, be insisted that an electric railroad company is not a railroad company within the meaning of the statute. The Supreme Court of this State, in the case of *Moses et al v. the P., Ft. W. & C. R. R. Co.*, 21 Ill., 523, hold that street railroads are railroads.

Again, in the city of *Chicago v. Evans et al*, 24 Ill., 56, the same rule is laid down.

In the case of the *Electric Railroad Company v. the Rapid Transit Company*, 24 New York, 566, it was held that an electric railroad company was, within the meaning of the statute (very similar to our statute), a railroad company.

The *Chicago Northwestern Railway Company v. The Electric Railway Company*, 95 Wis., 561, it was held that an electric railway company was, within the meaning of the statute, a railroad company.

The former Illinois Railroad and Warehouse Commission, page 337, *Decisions and Opinions of the Railroad and Warehouse Commission of Illinois*, held that an electric railroad was a railroad within the meaning of the statute.

The same question has been decided by the Circuit Court of the United States, in a very late decision, in the case of *Mallot v. The City of Collinsville*, 108 Federal Report, 313, and I can see no reason why we should not follow those decisions. A railroad company organized as this company, for the purpose of transporting both passengers and freight, most certainly is in the same line of business (that of common carrier) as any railroad company operating by steam power, and, in our view of the meaning of the statute, is a railroad.

It may be insisted that the respondents are not a railroad company within the meaning of the statute for the reason that the franchise is granted to Alpheus P. Goddard and Alpheus J. Goddard, as individuals. But, in view of the fact that they are to operate their road in connection with the General Electric Company, a railroad operated by a corporation, and that their said road is to be a part of that system, and in view of the further fact that the statute, section one, provides that hereafter any railroad company (not a corporation) desiring to cross the main track of another railroad company shall construct its crossings in such a manner as not to unnecessarily impede or endanger the travel of said road. We are of the opinion, and so hold, that for the purpose of this act, that any person, company or corporation desiring to cross

another railroad track with a railroad track must cross it at such place and in such a way that it will not unnecessarily impede or endanger the travel of the railroad company so crossed; and that it will not unnecessarily endanger the lives or property of the public, regardless of whether it is a railroad corporation or an individual, the law applying to the railroad itself, and not to the owners or operators.

This question has been settled to our entire satisfaction in the case of *Chicago Dock & Canal Co. v. L. P. Garrity et al*, 115 Ill., 155, on page 164. In that case the Supreme Court says:

"The city council or board of trustees shall have no power to grant the use of, or the right to lay down, any railroad tracks in any street of the city, to any steam or horse railroad company, except upon a petition of the owners of the land representing more than one-half of the frontage of the street, or so much thereof as is sought to be used for railroad purposes. It is very clear that 'natural persons' are here within the intention, although not within the letter of the act, for the injury against which protection is intended to be afforded is the laying of railway tracks in the streets. By whom the tracks shall be laid and the cars thereon operated is, manifestly, of no consequence whatever. The same result, in all respects, will follow the laying of railway tracks in the streets and operating cars thereon by individuals as will follow the laying of them by corporations. The use of the word 'company,' we have no doubt, was simply because such tracks are almost always laid and operated by companies. The clause should be read as including both corporations and individuals."

On December 5th the parties met at the office of the Railroad and Warehouse Commission, in Chicago, for a hearing, C. B. Keeler representing the complainant. Alpheus J. Goddard appeared in person and asked to be excused from taking any part in the trial.

Thereupon the commission found for the complainant on the plea to the jurisdiction, holding that the commission had jurisdiction over electric railroad's under the statute providing for railroad crossings, the same as over steam railroads and holding that the defendants are a railroad company within the meaning of the statute, and proceeded to hear the evidence.

The evidence shows that the proposed crossing of the complainant's road by the defendant's electric road is at the foot of a very deep grade from the south, to-wit: 100 feet to the mile; that it is within 90 feet of the embankment of the Illinois Central Railway, which is about 20 feet high, that absolutely shuts off all view of trains coming from the north, which pass under the Illinois Central Railway within 90 feet of Shawnee st. and the proposed crossing by the said electric railway over the Chicago, Milwaukee & St. Paul Railway; that trains coming from the north and crossing under the Illinois Central railway cannot be seen by a person standing on the Chicago, Milwaukee & St. Paul track at the proposed place of crossing until they are within 150 feet of the crossing; that a car on the electric track 25 feet north from the proposed crossing cannot be seen by an engineer coming from the north on the Chicago, Milwaukee & St. Paul Railway until they are within

about 50 feet of the crossing; that the grades of the roads of both parties descend to the proposed point of crossing, and for the above reasons it is necessarily a very dangerous place of crossing.

The evidence shows that an electric road comes east on Empire st., which is about 1,000 feet south of the proposed crossing, to Bauscher st.; thence south to Adams st. on Bauscher st.; thence northwest to Chippeway st. on Adams st.; thence north to Shawnee st. on Chippeway st.; thence east on Shawnee st. across the Chicago, Milwaukee & St. Paul Railway to Arcade av.; thence north under the Illinois Central Railway tracks to Grand av. The intersection of Bauscher and Adams sts. is within a very short distance of the crossing of Adams st. over the Chicago, Milwaukee & St. Paul Railway, which is by an overhead bridge, and the commission are of the opinion that the proper place to cross is over a bridge on Adams st. or between Shawnee st. and Adams st. by an overhead crossing.

In this case the Chicago, Milwaukee & St. Paul Railway company objected, as provided by the statute. The commission have given notice to the defendants; have viewed the crossing, as provided for by law, and have heard the evidence of the objectors to the proposed place of crossing and have given all parties interested an opportunity to be heard, and the board, after full investigation of all the facts, and a thorough inspection of the ground, find that the proposed crossing is at an unnecessarily dangerous place; that it will unnecessarily impede and endanger the travel over the complainant's railroad, and that there is within so short a distance a place of crossing where the defendant's road can be put over the road of the complainant, and thereby prevent any danger that could or would arise from the grade crossing; prevent any unnecessary delay to the complainant company by reason of a grade crossing, and be far better for the defendant's own road, with very little more expense than the proposed crossing.

And for the above reasons, we shall hold that the proposed place of crossing is unnecessarily dangerous, and will unnecessarily impede and endanger the travel of the complainant's company, and that the proper place of crossing is by an overhead crossing at the intersection of Adams st. and the Chicago, Milwaukee & St. Paul Railway Company, or between Shawnee st. and Adams st.

It is therefore ordered by the commission, that the respondents, Alpheus P. Goddard and Alpheus J. Goddard and the General Electric Company of Freeport, a company erecting a railway at Freeport, have leave to cross with its tracks by an overhead crossing on Adams st., over the tracks of the Chicago, Milwaukee & St. Paul Railway, and they are ordered not to cross at grade on Shawnee st.; that said overhead crossing shall leave 22 feet in the clear from the tops of the rails of the Chicago, Milwaukee & St. Paul Railway Company to the lower part of the superstructure of the said overhead crossing of the defendant's company.

It is further ordered that the said Alpheus P. Goddard and Alpheus J. Goddard and the General Electric Company, railway company, pay the entire costs of the construction and maintenance of the said crossing of their said railway over the Chicago, Milwaukee & St. Paul Railway on said Adams st.

It is further ordered, that the said Alpheus P. Goddard and Alpheus J. Goddard and the General Electric Company of Freeport, railroad company, pay the cost of the commission in this proceeding.

Dated at Springfield, Ill., Dec. 11, 1901.

THE AURORA, ELGIN & CHICAGO RAILWAY COMPANY

v.

THE SUBURBAN RAILROAD CO., CHICAGO TERMINAL TRANSFER CO.,
LAKE STREET ELEVATED R. R. CO., AND THE
CHICAGO & HARLEM RY. CO.

Appearances—Shope, Mathiss, Zane & Webber, Hopkins, Dolph & Scott, for petitioner; Clarence A. Knight, for the Lake Street Elevated R. R. Co.; Jesse Barton, for the Chicago Terminal Transfer Co.

Petition for three crossings.

The petition in this case alleges, and it is conceded by the respondents, that all of said companies are railroad companies within the meaning of the statute, and that this board has jurisdiction of the companies and of the subject matter. The only question then for consideration is the question of crossing.

Crossing No. 1 is the crossing of the petitioners' tracks over the tracks of the Chicago Terminal Transfer Co., at a point on the east side of the Concordia cemetery, just north of Harrison street, if extended. This crossing is within a few hundred feet of the end of the track of the Chicago Terminal Transfer Co., which is a single track, and the evidence in this case shows that at the present time there are very few cars operated on said track and very few people ride on the cars over the proposed place of crossing. This board has viewed the place of crossing and has taken evidence, which is given very fully in the record, as to the location of the ground, and from the evidence taken, as well as from the observation of the commission at the time of viewing the proposed place of crossing, it seems certain that there is no special reason for an overhead crossing at this place at present. It is on a very level piece of ground, with nothing to obstruct the view for several hundred feet each way, and very few cars operated over the road of either company at present; and while this commission very much desires that all railroad crossings should be made overhead or under highway crossings, from the evidence and the surroundings in this case it is very clear that it would be a great hardship on a new company to put an overhead crossing at this place, and in our opinion it is not necessary at the present time, and should it at any future time become necessary, this commission will retain the right by the order in this case to order an overhead crossing.

Crossing No. 2 is the proposed crossing near Harrison street in the town of Cicero, Cook county, Ill., of the Suburban Railroad Company,

where the said company is operating a double track railway in and along said Harrison street. This proposed crossing crosses the tracks of the Suburban Company where they are used very frequently by cars on each track running in opposite directions and hauling a great many passengers. During the racing season they run a great many cars to the race tracks and haul thousands of passengers each way every day. While this is on a very level piece of ground and nothing to obstruct the view from either side, on account of the great amount of travel on the Suburban Railroad tracks, in our opinion it is necessary to have an overhead crossing, and that a grade crossing will unnecessarily impede and endanger the property of the respondent company and the lives of its patrons, and for that reason the order in this case will be made so that an overhead crossing will be built at crossing No. 2.

Crossing No. 3, which is on Fifty-second street, where the Aurora, Elgin & Chicago Ry. Co., petitioners, propose to cross the Suburban Company's tracks, is within a very short distance of where the ordinance of the town of Harlem provides that the Aurora, Elgin & Chicago Railway Company shall come to grade to connect with the Metropolitan Road, and if this commission should order an overhead crossing, it would mean an abandonment of their proposed connection and would work a forfeiture of the franchise to the Aurora, Elgin & Chicago Ry. Co. through the town of Harlem. We regret very much that the location and grade of the Metropolitan Road is not such that the Aurora, Elgin & Chicago Ry. Co. could connect with it by an overhead elevated connection and thus put in an overhead crossing on Fifty-second street, but in view of the fact that it is on a very level piece of ground and nothing to obstruct the view, and the further fact that the ordinance granting the franchise to the company through the town of Harlem provides that within twenty years from the granting of the franchise the said railway company shall elevate its tracks, we are of the opinion that there is no present necessity for an overhead crossing beyond what there is at any other crossing on the open prairie, and the order in this case will provide for an interlocker to be put in on Fifty-second street crossing No. 3 and to be operated by the Aurora, Elgin & Chicago Railway Company, and that at any time hereafter when, in the opinion of this commission, it is necessary to have an overhead crossing, that this commission reserves the right to order the same, and the company accepting the right to cross at grade accepts it on the above conditions, that whenever ordered to put in an overhead crossing by the then Railroad Commission of the State of Illinois, that they shall do so at their own expense within a reasonable time, to be fixed by the commission.

And now, on the 21st day of February, A. D. 1902, come the petitioner in this cause, by Shope, Mathis, Zane & Webber, and Hopkins, Dolph & Scott, its attorneys, and the Suburban Railroad Company, and the Lake Street Elevated Railroad Company, by Clarence A. Knight, their attorney, and the respondent, The Chicago Terminal Transfer Company, by Jesse Barton, its attorney, and the commission now determines that it has full jurisdiction over the parties and subject matter hereof, and the commission having listened to the testimony produced by the parties

hereto, and fully examined the exhibits and listened to the argument of counsel representing the respective parties hereto, and now being fully advised in the premises find as follows:

The said petitioner and the respondents will, for convenience, be hereinafter designated as follows:

The Petitioner—"Aurora Company."

The Suburban Railroad Company—"Suburban Company."

The Lake Street Elevated Company—"Elevated Company."

The Chicago Terminal Transfer Company—"Terminal Company."

A. That the petitioner filed herein its petition to cross the lines of railroad of the respondents, the Suburban Company, Elevated Company and the Terminal Company at the points of crossing shown on "Exhibit A" submitted with said petition and indicated at said points and numbered thereon as Nos. 1, 2 and 3; that at the hearing of this cause the Aurora Company changed the point of crossing No. 1, as shown and indicated by the blue print hereto attached and marked "Exhibit E."

B. That the Terminal Company is the owner of and the Suburban Company the lessee of the railroad at point of crossing marked No. 1, as shown on "Exhibit E," and that the Elevated Company is the lessee of the Suburban Company of said railroad at crossing No. 1.

C. That the Suburban Company is the owner of the railroad at crossings Nos. 2 and 3, said railroad at crossing No. 2 being subject to a lease to the Elevated Company.

D. That the proposed manner of crossing at No. 2 by the Aurora Company, as shown in their petition, would make said crossing dangerous and would impede travel and transportation upon the said line of railroad of the Suburban Company, and that objection has been made to the mode of crossing proposed by the petitioner, and that the petitioner has applied to this commission to prescribe the place where and the manner in which said crossings Nos. 1, 2 and 3 shall be made and the commission having viewed the ground at crossings Nos. 1, 2 and 3 and given all parties interested an opportunity to be heard, and having due regard for the safety of life and property, does hereby make and order as follows:

First—That said Aurora Company shall be permitted and is hereby authorized to cross the track or tracks and right-of-way of the Terminal Company and the Suburban Company and the Elevated Company as lessees at crossing No. 1 at the place and in the manner and mode shown in "Exhibit E," subject to the provisions, conditions and limitations hereinafter set forth with reference to said crossing.

(a) The necessary frogs, switches and appurtenances shall be put in at said point of crossing No. 1 solely at the expense of the Aurora Company, under the supervision and direction of the engineer of the Suburban Company. Said crossing shall be so placed at No. 1 as not to interfere with the operation of the cars of the Suburban Company or the Elevated Company over the tracks during the progress of said work: *Provided*, the said crossing at No. 1 shall be what is commonly known as a standard double-track crossing with an open throat for both the Aurora Company and the Suburban Company.

(b) The Aurora Company having stated before the commission that it intended to operate its said railroad by electricity, adopting a third rail system for said purpose, such third or live rail to so operate said railroad may be placed with protection boards upon the right-of-way of the Suburban Company and the Terminal Company at any point not nearer than ten feet of the outer rails of the track of the Suburban Company at said point of crossing, as the same now exists or may hereafter be laid.

(c) The Aurora Company shall have the right to place and bury its electric wires underneath the right-of-way of the Suburban Company at said crossing No. 1, within a point not exceeding three feet outside of the two tracks of the Aurora Company, and shall so place said electric wires in conduits, or in such manner as may be directed by the Suburban Company, so as not to interfere in any manner whatsoever with the operation of the railroad of the Suburban Company and Terminal Company at said point.

(d) The Aurora Company shall pay to or keep said Suburban Company, said Elevated Company and said Terminal Company harmless from any loss or damage to persons or property that may occur or happen at said crossing by reason of the grant of this permit.

(e) The Aurora Company shall at all times and on all occasions before proceeding to cross the track or tracks of the Suburban Company at crossing No. 1, from either direction, stop its cars or trains within fifty feet of the point of crossing and send some fit and competent person to see that the crossing is free and clear and safe for the passage of the cars or trains of the Aurora Company or its lessees, and in no case shall said Aurora Company have the prior right-of-way over said crossing, and in all cases the Aurora Company's cars or trains shall refrain from crossing at said point when Suburban car or a car of its lessee is proceeding toward said crossing and within two hundred (200) feet thereof.

(f) The Aurora Company shall at all times keep and maintain said crossing in perfect condition and repair and pay the whole and entire expense and cost thereof, and in case it shall fail so to do, the Suburban Company or the Terminal Company, or their respective lessees, shall be authorized so to do and the Aurora Company shall promptly pay on demand the entire cost and expense thereof.

(g) Said point of crossing at No. 1 shall be considered and treated as a junction of the said two railroads.

(h) The detail and drawings for said crossing No. 1 shall be submitted to the engineer of the Suburban Company for his approval before the same shall be placed at that crossing: *Provided*, in case the engineer of the said Suburban Company shall not approve said plans or drawings within one day after submission to him, the same shall then be subject to the approval of the chairman of this commission.

(i) The foregoing provisions with reference to crossing No. 1 are each and all subject to the right of the commission hereafter to order, at said point, such other overhead crossing or protection as it may deem advisable at the expense of the Aurora Company.

(j) In case the Suburban Company shall see fit to change the alignment of its present track or tracks the entire expense of so changing the same shall be borne by the Suburban Company.

Second—That said Aurora Company shall be permitted to and is hereby authorized to place at crossing No. 2 a temporary double-track crossing, subject to the provisions as hereinafter contained, with reference to said crossing No. 2.

(a) Said crossing No. 2 shall be constructed and placed at said point of crossing, subject to the same terms, provisions, conditions, limitations and restrictions as herein contained with reference to crossing No. 1.

(b) The said temporary crossing No. 2 shall be so placed and constructed as not to interfere with the construction of an overhead crossing as herein provided.

(c) The foregoing provisions with reference to temporary crossing No. 2 are each and all subject to the provisions hereinafter contained with reference to the overhead crossing at said point.

Third—The said Aurora Company shall be and is hereby permitted to cross the Suburban Company at crossing No. 3 subject to the following provisions, conditions, limitations and restrictions, viz:

(a) The said Aurora Company shall place at said crossing No. 3 a half interlocking device by which the right-of-way shall be given to the Suburban cars or trains over said point of crossing, and the Aurora Company's cars or trains, or its lessees, shall at all times stop to be interlocked before proceeding across said crossing, and such interlocking device to be so constructed as to derail the cars of the Aurora Company.

The plans and specifications for such interlocking device at said point of crossing to be submitted to the engineer of the Suburban Company and to the consulting engineer of this commission for their approval, and in case they shall not approve the same within five days after such presentation, then the same shall be referred to the chairman of this commission for his approval.

(b) The Aurora Company shall not operate its cars or trains over said crossing until said interlocking device shall have been first installed: *Provided*, said Aurora Company shall have the right to cross at said crossing temporarily, until the installation of said interlocking device, as hereinafter provided, subject to all the provisions with reference to crossing No. 1.

(c) Said Aurora Company shall be liable to the Suburban Company for all loss or damage to persons or property that may occur by reason of the permission for said grade crossing, as aforesaid, at said point No. 3.

(d) The Suburban cars or trains shall at all times have the preference of the right-of-way over said point of crossing No. 3.

(e) In case a Suburban car or train, or a car or train of its lessee, shall be proceeding northwardly, and on the viaduct, about nine hundred (900) feet south of said point of crossing, the cars or trains of the Aurora Company shall be interlocked until such car or train shall safely pass said crossing: *Provided*, said Aurora Company, in order to avoid

waiting for a car or train of the Suburban Company, or its lessee, as provided in said clause (e), may install a full interlocking device, in which case the foregoing provision as to clause (e) shall not apply.

Fourth—It is further ordered that said Aurora Company shall, on or before Jan. 1, 1903, as a condition of granting this permission to construct a temporary crossing at No. 2, cause to be constructed at said point an overhead crossing in such manner that the bottom or lower chord of the girders supporting the tracks over the tracks of the Suburban Company shall be 14 feet above the top of the rails of the track or tracks of the Suburban Company as now laid and under the general plans and specifications herewith submitted and approved by the commission and made a part of this order, and herewith filed with the commission as "Exhibit Z."

Provided, that while and during the time said Aurora Company shall be engaged in the work of elevating said tracks at said point it shall not interfere with the operation of the cars or trains of the Suburban Company, or its lessees, over said track at crossing No. 2, and that when the work shall have been completed, or prior thereto, the tracks of the Suburban Company may be changed sufficiently so as to leave a clear head room of 14 feet; such change of location to be made as hereinafter provided: *Provided*, upon notice by the Aurora Company that it is ready to proceed with the erection of said overhead crossing, the cars or trains of the Suburban Company, or its lessee, shall cease operating at said point of crossing No. 2 during the progress of said work, not to exceed a period of 30 days: *Provided, however*, the Aurora Company shall not give such notice prior to Nov. 1, 1902; and in no event shall the operation of the cars of the Suburban Company be interfered with for a longer period of time than 30 days.

(a) The Aurora Company shall at all times, at its own expense, keep and maintain in good repair and condition the said overhead structure.

(b) The Suburban Company and the Terminal Company shall have the right to attach underneath said overhead structure all such electric wires, cables, electric feeders and other electric appurtenances as it may deem advisable, and use the said overhead structure so far as it may deem necessary for the purpose of operating said railroad.

(c) The Suburban Company shall, and all parties hereto consent, change its present tracks and right-of-way at crossing No. 2 in the manner shown on general plans herewith submitted for such overhead crossing, and shall make such change on or before Nov. 1, 1902. The top rails of the track when so relaid to be at the same height as the present rails are now laid, so as to leave the clear head room between the tops of the rails when so laid and the overhead structure to be erected by the Aurora Company 14 feet, as herein prescribed. Said work of so changing the Suburban Company's tracks must be done prior to the time when the Aurora Company is ready to proceed with the work of said overhead crossing at No. 2. The Suburban Company to have the right to construct, maintain and operate its road over said

changed location, as shown in said plans indicating such changed location as ordered by the commission, and shall at all times have sufficient clearance for the passage of its cars over its tracks along, upon and over the right-of-way where said tracks are laid at said new location.

(d) The said overhead work to be completed on or before Jan. 1, 1903, unless the chairman of this commission shall, for good cause, extend the time of completion or the contractors shall be delayed by strikes, accidents or other causes interfering with the progress of the work.

(e) In case said Aurora Company shall fail to comply with any one of the terms, conditions, limitations and restrictions contained in this order as to such temporary crossing at No. 2, or shall fail to complete the overhead crossing as herein provided and within the time as herein fixed for crossing No. 2, or shall fail to place said interlocking device at crossing No. 3 before Oct. 1, 1902, then the Suburban Company shall have and is hereby authorized to take up and remove the said crossings of the Aurora Company and all the rails, ties and appurtenances upon the right-of-way of the Suburban Company at either crossing Nos. 2 or 3.

Fifth—The respondents hereby, before this commission, agree that if the Aurora Company shall faithfully and fully carry out and perform each and every of its obligations, duties and conditions in this order prescribed, that they will waive all proceedings to acquire said right of crossing under the Eminent Domain law of this State; otherwise, in case the Aurora Company shall fail to comply in every respect with this order, then it shall acquire the right to maintain said crossing by virtue of condemnation proceedings.

Sixth—The commission hereby reserves to itself jurisdiction of all the parties and subject matter hereof until the full completion of the matters and things set forth for the purpose of carrying into full force and effect the terms and provisions of this order, and the right to enter upon, by its agents or employes, the right-of-way of the respondents herein and of the Aurora Company after the completion of any part of said work herein prescribed and take up and remove the same in case the parties hereto shall in any respect fail to comply with the order and direction of the commission with reference thereto, either as herein prescribed or as prescribed in the future. All expense of so doing to be borne by the party at fault in respect to the matter to be so determined.

Seventh—All the terms, provisions and conditions of this order shall apply to and be binding upon the respective successors, lessees and assigns of all the parties hereto.

Eighth—The Aurora Company shall have the right to erect over the right-of-way at the respective crossings Nos. 1, 2 and 3, all wires, poles and appliances it may deem necessary for the purpose of conveying electric current to operate its said railroad, but all wires shall be at least seven (7) feet above any wires the respondents may have at said points and shall not be constructed in any manner so as to interfere with the operation of the cars of the respondents over said crossings.

Ninth—It is understood that “Exhibit E” attached to said order shows the track of the Terminal and Suburban Companies shifted eastwardly from their present location. It is understood and agreed that when the Aurora Company lays the crossings and special work called for by “Exhibit E” it shall have the right to cut the track of said Suburban Company as now located and the Suburban Company shall then shift its track to comply with the location shown by “Exhibit E.”

Tenth—It is further ordered that the petitioner pay forthwith the cost of this proceeding, which said cost shall be paid prior to the said Aurora Company entering upon or laying its temporary tracks as herein provided and which said cost shall be such sums as the commission may allow to the parties to this proceeding, and including the cost of the commission itself.

J. S. NEVILLE,
Chairman.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY

v.

FREEPORT RAILWAY, LIGHT AND POWER COMPANY.

JAMES S. NEVILLE, *Chairman.*

• On Oct. 20, 1903, the complainant, Chicago, Milwaukee & St. Paul Railway Company, duly filed with the commission its verified petition, alleging in substance that it was a railway corporation owning and operating a line of steam railroads into and through the city and township of Freeport, in Stephenson county, Illinois, over which it was a common carrier of freight and passengers; that the respondent, Freeport Railway, Light and Power Company was a corporation organized and existing under the laws of Illinois, and owning and operating by electric motive power a railroad extending along and upon certain streets of said city and certain public highways of said township, over which it was a common carrier of passengers, freight and express, under authority and permission from the city council of said city and the board of supervisors of said county, respectively; that said electric railroad intersected and crossed at grade the steam railroad track of complainant, upon a public highway of said township commonly called Shawnee st., and just outside of the city limits; that the location, grade and curves of both said tracks were such as to make a surface crossing at that place unavoidably and extremely dangerous to life and property; that a safe and practicable overhead crossing could be made in the vicinity, and that the complainant had at all times objected to and protested against such grade crossing, without avail; said petition prayed that the board would hear the matter, and determine and order the place where and the manner in which such crossing should be made, and particularly would forbid respondent from continuing to cross at grade in said Shawnee st.

The commission thereupon assumed jurisdiction of the matter of said complaint, and set the case for hearing at the office of said Railroad and Warehouse Commission in the city of Chicago, Ill., on Oct. 31, 1903, at 9:00 o'clock a. m., and caused due and legal notice thereof to be given to said respondent company.

At the time and place fixed for said hearing the parties appeared; complainant being represented by its solicitor, and the respondent by Judge S. P. Shope, its solicitor; and thereupon respondent's solicitor requested an adjournment of the hearing to a later day, in order to give him further time to look into the case, which request was granted by the board, and the hearing was thereupon duly adjourned to Nov. 13, 1903, at 9:00 a. m., at the same place.

Afterwards, on Nov. 13, 1903, the board met at the place and hour appointed and again called said case for hearing; the complainant appearing by Charles B. Keeler its solicitor, and respondent's solicitor, Judge S. P. Shope and Alpheus J. Goddard, its secretary being also present, but declining to enter formal appearance or make answer in said cause and objecting to the jurisdiction of the board. Thereupon the board held that it had jurisdiction of the parties and subject matter of this proceeding, and received and heard the oral and documentary evidence offered therein.

The statute of Illinois (Act of May 27, 1889) provides: "That hereafter any railroad company desiring to cross with its tracks the main line of another railroad company, shall construct the crossing at such place and in such manner as will not unnecessarily impede or endanger the travel or transportation upon the railway so crossed. If in any case objection be made to the place or mode of crossing proposed by the company desiring the same, either party may apply to the Board of Railroad and Warehouse Commissioners and it shall be their duty to view the ground and give all parties interested an opportunity to be heard. After full investigation, and with due regard to safety of life and property, said board shall give a decision prescribing the place where and the manner in which said crossing shall be made, etc."

The respondent is a corporation organized under the laws of Illinois, with power to generate, distribute and sell electrical current for lighting, heating, power and other purposes; and to construct, own, operate and maintain a street railway in Freeport and vicinity to be operated by electricity or other motive power. The franchise from the county board of supervisors, under which it is maintaining and operating its electric railroad along the township highway and over the crossing in question, expressly authorizes it to do a passenger, freight, mail and express business. Its track is required to be of standard gauge and laid with T rails. It must be assumed that the company will exercise all the powers granted to it.

Lieberman v. Chicago Rapid Transit R. R. Co., 141 Ill., p. 152;

Goddard v. C. & N. W. Ry. Co., 104 Ill. App., p. 532-3.

Is the respondent a "railroad company" within the intent and meaning of the above statute? As early as 1859 the Supreme Court of Illinois

referred to street railroads as falling within the general designation of "railroads," and held that the mere difference in motive power did not effect such classification.

Moses v. P. F. W. & C. R. R. Co., 21 Ill., p. 522-3.

In 1860 the court held that a statute authorizing all railroads incorporated in the State, to connect and make running arrangements with each other, included horse as well as steam railroads, saying:

"This language is manifestly sufficiently comprehensive to embrace horse railways as well as railroads whose cars are propelled by steam or other power, as well as roads authorized to transport passengers only, as roads authorized to transport passengers and freight by other power. The language of the enactment embraces all roads then organized, as well as those which might afterwards become so and the act makes no distinction, or reservation as to the character of the railroad. The members of the General Assembly were fully aware that these various roads existed, and if any roads answering either description, were not designed to be embraced, they would, it appears to us, have limited the operation of the act so as to have excluded them. Horse city railways unquestionably fall within the description of the class of subjects of which they were legislating. They are, in every sense of the term, railroads; they are incorporated under the laws of the State, and are embraced within the language of the statute, and we have no doubt within its spirit."

City of Chicago v. Evans, 24 Ill., p. 55-6.

In 1892 the same court, construing an act for the organization of corporations for the purpose of constructing and operating any railroad in this State, held that it also included elevated railroads, saying:

"We are able to perceive no reasons why the word 'railroad' as here used, should not be construed to apply to elevated railroads as well as to any other."

Lieberman v. Chicago Rapid Transit R. R. Co., 141 Ill., p. 147.

And in considering the status of an electric street railroad, under the statutes of Illinois, the United States Circuit Court of Appeals for the Seventh Circuit, said:

"The fact that its trains are to be operated by electricity instead of steam, does not affect its place in the laws of the State as a railroad company."

Molott, Receiver v. Electric Ry. Co., 108 Fed. Reporter, p. 318.

In New York it was held that the crossing of steam railroads by electric street railways, came within the statute of that state providing for the appointment of commissioners to determine the manner in which railroads should cross each other. The language of the statute was, "every railroad corporation," and it was held to include electric street railways as well as steam railroads.

Elec. R. R. Co. v. Rapid Transit R. R. Co., 24 N. Y. Supp., 566, affirmed in 144 N. Y., 445.

In 1902, the New York Court of Appeals in an elaborate opinion, held that a statute requiring "every railroad corporation" whose road was intersected by any "new railroad," to unite with the latter in providing

necessary intersections and facilities, was applicable to electric street surface railroads crossing steam railroad, and vice versa. This decision is directly in point.

St. Ry. Co. v. B. & M. R. R. Co., 64 N. E. Reporter, 511.

In Pennsylvania, the act of 1871 empowered court of equity to prevent one "railroad company" crossing the tracks of another at grade, if reasonably practicable to avoid a surface crossing, and the Supreme Court held that the statute applied to electric street railroads seeking to cross at grade the tracks of a steam railroad.

Pa. R. R. Co. v. Braddock Elec. Ry. Co., 25 Atl. Repr., 780; s. c. 152 Pa. St., 116.

In Iowa, it was held that a statute regarding the appropriation of right-of-way for "railroad" companies, applied to horse as well as steam roads. The court quote and approve *City of Chicago v. Evans*, 24 Ill., 52, *supra*.

City of Clinton v. Ry. Co., 37 Iowa, 61.

In Vermont, a street railway company authorized to carry freight and passengers was held to be a railroad company within the meaning of the statute regulating the crossing or connection of one "railroad" by another.

R. R. Co. v. St. Ry. Co., 50 Atl. Repr., p. 637.

In Wisconsin, it is held that electric street railroads carrying passengers, freight, mail and express matter, and running upon country as well as city highways, (like the respondent in this case), was to all intents and purposes an ordinary commercial railroad.

R. R. Co. v. Elec. R. R. Co., 95 Wis., 561.

Zehren v. Elec. Ry. & Light Co., 99 Wis., 83.

This question was before the former board, in a similar crossing case, and it was there held that an electric railway was a "railroad" within the meaning of the statute (*C. & A. Ry. Co. v. Alton Ry. & Ill. Co. Decisions of the Commission*, Vol. 1, p. 337). The board has also assumed jurisdiction in later cases, over like crossing of electric railroads with steam roads. Under the above authorities we see no reason to change our former holdings in that respect.

No valid reason can be urged why electric railroads running upon country highways and doing a passenger, freight, mail and express business, should not come within the purview of the above statute. They are common carriers, doing a general transportation business, and substantially like ordinary commercial railroads, except as to motive power and some other details. The plain object and spirit of the statute was to secure protection to persons and property at railroad crossings, and it is clear that the danger of accident is just as great in the one case as in the other. Indeed, electric roads often run at greater speed in the country than ordinary railroad trains; collisions between steam and electric cars are becoming more frequent, and are often attended with great loss of life and property. The dangers intended to be guarded against by the statute are precisely the same in the case of this crossing as in any other railroad crossing. How such dangers arise—that is, from what particular kind of motive power or cars—is manifestly immaterial.

The statute should be so interpreted as to carry out its plain object and intent, and we therefore hold that it confers upon this board jurisdiction over the subject matter of the present controversy and that jurisdiction of the parties has been duly acquired.

Before considering the merits, it is necessary to state the prior proceedings relative to this crossing, as disclosed by the evidence. In June, 1901, Alpheus P. and Alpheus J. Goddard applied for and procured from said board of supervisors a franchise to construct and operate an electric street railway for the transportation of passengers, freight, mail and express upon said township highway, known as Shawnee street, and were about to lay their track at grade, over the crossing in question, when said Chicago, Milwaukee & St. Paul Railway Company (complainant herein), on Nov. 18, 1901, filed with this board its verified petition against said Goddards, setting up the dangerous character of such proposed crossing, and praying that the commission would determine and prescribe the place and manner of crossing, as provided by the statute. The board fixed a time and place for the hearing, duly notified the parties thereof, and on Nov. 21, 1901, personally visited and inspected the grounds in company with both parties. Afterwards, on Dec. 2, 1901, said A. P. and A. J. Goddard filed their bill in equity and procured from the circuit court in Stephenson county a temporary writ of injunction, without notice, restraining said C., M. & St. P. Ry. Co. from interfering with or preventing such grade crossing of its track at that place, and under cover of such injunction put in the present crossing and began to operate the same. Afterwards, on Dec. 5, 1901, and at the time and place previously fixed, this board publicly heard the matter of said complaint (the Goddards having appeared and filed their sworn answer, setting up that they had a good defense on the merits, and the commission has no jurisdiction), and after hearing the evidence, found that such proposed grade crossing was unnecessarily dangerous and would unnecessarily impede and endanger the travel and transportation upon petitioner's steam railroad, and that the proper and safe place and manner of crossing would be at another highway and by an overhead bridge; and this board thereupon duly ordered said Goddards not to cross petitioner's track at grade in said Shawnee street, but overhead and at Adams street, upon an existing highway bridge, and gave due notice of such finding and order to said Goddards, as more fully appears by reference to the record of the board in that case.

That afterwards such proceedings were had in the injunction suit that said circuit court of April 4, 1902, dissolved the injunction and dismissed said bill for want of equity, but ordered that the preliminary injunction should remain in force pending an appeal by the Goddards, then prayed and allowed. That such decree was afterwards appealed to and affirmed by the appellate court for the Second district (Goddard et al v. C., M. & St. P. Ry. Co., 102 Ill. App., 533) and on April 24, 1903, was finally affirmed by the Supreme Court of Illinois upon further appeal (A. P. Goddard et al v. C., M. & St. P. Ry. Co., 202 Ill., 452); and that on or about June 20, 1903, the precendo and mandate of said Supreme Court was filed in the circuit court of Stephenson county, and said suit was thereupon ended and said injunction was finally dissolved.

It further appears that on Jan. 13, 1903, and pending their above appeals, said Alpheus P. and Alpheus J. Goddard with one William N. Conkrite, organized a corporation under the laws of Illinois, called the "Freeport Electric Company," with power to acquire, own and operate a line of electric street railroad in the city and the township of Freeport, and also to generate, distribute and sell electrical current for light, heat and power purposes. On May 27, 1903, its name was duly changed to "Freeport Railway, Light & Power Company" (the present respondent), and on June 1, 1903, said Goddards sold and by deed conveyed to said "Freeport Railway, Light & Power Company" this electric railroad, together with all property, rights, grants and privileges of said Goddards under franchises of said city and board of supervisors, so that said last named company became and still remains the owner of the electric road in controversy and continues to operate it along Shawnee street and over said crossing at grade, as before. Alpheus P. Goddard is the president and Alpheus J. Goddard is the secretary of the new company, and both are directors.

We, therefore, find that the present complainant has prosecuted this proceeding with due diligence, and that the rights of the parties are the same as if the existing crossing at this place had not been previously put in, but was in contemplation. It is clear that respondent had legal notice of the foregoing facts.

Coming now to the merits of the controversy, it appears that this crossing is in precisely the same condition as when the board visited and inspected the ground, except that the electric track is in and being operated. In all other respects the situation is the same, as conceded by the parties and shown by the photographs and other evidence. The commission did not, therefore, deem it necessary to again visit the place.

The evidence establishes that this grade crossing is exceeding dangerous to life and property. Seventy-one feet of complainant's right-of-way including its railroad track, lie outside of the city limits, and cross the township highway known as Shawnee street, at right angles. In approaching this crossing from the south the steam railroad curves sharply near the crossing, and also descends by a heavy grade for a distance of about 3,000 feet to the crossing itself; this grade is about 1.4 per cent at first, and then increases to 1.9 per cent, or about 100 feet to the mile, for the last 900 feet of that distance, making it very difficult under the most favorable conditions, and with heavy or fast trains practically impossible to stop in time to avoid collisions at such crossing. Just north, and only about 100 feet or so distant from this crossing, complainant's track passes under the elevated roadway and tracks of the Illinois Central Railroad Company, through a narrow opening 13 feet wide, and then curves sharply to the west, on an ascending grade. This elevation is a solid earth embankment (except at such narrow subway) about 20 feet in height, and extends in a slightly southeasterly direction, completely shutting off the view of Milwaukee trains approaching from the north, until they emerge from the subway and are close to the crossing. Such trains must attain considerable speed and momentum before passing under this Illinois Central embankment

in order to climb the heavy grade to the south, so that the engineer cannot see this highway crossing and approaching electric cars, or check his speed, in time to avoid threatened collisions. Experiments made by a locomotive engineer show that when entering the north end of the subway, coming south, he can only see about 15 feet on each side of the Milwaukee track at this crossing, and then it is too late to stop or materially check the speed of the train. It is obvious that if an electric car should become derailed, or the trolley disconnected, upon or close to this crossing, a serious accident is liable to occur at any time.

And the danger is still further increased by the location and grade of the public highway and electric track thereon. Approaching the crossing from the west or city side, this highway and track descend to about the crossing itself, and then slightly ascend and curve, running parallel to and near the southerly side of said Illinois Central elevated embankment for several hundred feet, when both highway and electric track turn sharply north and pass under said high embankment. As electric cars run in both directions, the risk of accident at this crossing is almost equally great from both approaches. The photographs, plates, profiles and oral evidence abundantly show that this surface crossing is exceptionally dangerous.

The electric road comes east on Empire street to its termination near the city limits, then turns north on Bauscher street to Adams street, thence northwest on Adams to Chippewa street, thence north on Chippewa to Shawnee street, and then east on said Shawnee street down to and over the crossing in question. Empire street is five blocks south of this crossing and the intersection of Bauscher and Adams streets is three blocks south. From either point the engineer's surveys show three feasible and practicable routes across complainant's right-of-way and track, by overhead bridges at favorable points where the steam railroad lies in a long cut and thence to the highway called Arcade avenue on the east side, extending directly to the electric underground crossing of the Illinois Central tracks. One of these routes is by the way of Adams street which now crosses complainant's track by an overhead bridge, and the others require the erection of overhead bridges, but are shorter in distance and more direct. All the routes require less grades for operation than some of those now existing on respondent's line of road in the city of Freeport. It is possible to cross overhead at any other point south of the present Shawnee street crossing, if desired. For most of the distance to Adams street, the land is vacant and unimproved for several hundred feet on each side of complainant's track.

The policy and wisdom of avoiding grade crossings wherever practicable is peculiarly applicable to the present situation, as disclosed by the proofs and by personal inspection of the ground by this board.

For the above reasons we find and hold that the present crossing at Shawnee street is necessarily and extremely dangerous, and will unnecessarily impede and endanger the travel and transportation upon complainant's railroad, and also endanger that upon the electric railroad of respondent itself. That the proper and safe manner of crossing is

by an overhead bridge, and the proper place thereof is at said Adams street, or at some point between there and Shawnee street, as respondent may select.

It is therefore ordered by the board that the respondent, Freeport Railway, Light & Power Company, cross with its electric track or tracks over the railroad track and right-of-way of said Chicago, Milwaukee & St. Paul Railway Company, near Freeport, Ill., by an overhead bridge crossing, and at the public highway known as Adams st., or at some point between said Adams street and Shawnee street, to be selected by respondent in writing, filed with the board within thirty days from the filing of this decision. Such overhead crossing to leave 22 feet in the clear between the top rails of complainant's track and the lower part of the superstructure of said bridge. And said Freeport Railway, Light & Power Company is hereby ordered not to cross or continue to cross at grade in said Shawnee street.

It is further ordered that said respondent, Freeport Railway, Light & Power Company, pay the entire costs of the construction and maintenance of such overhead crossing, including approaches; and that respondent also pay the costs of this proceeding before the commission.

Dated at Springfield, Ill., this 30th day of November, A. D. 1903.

J. S. NEVILLE, *Chairman*;

ARTHUR L. FRENCH, *Commissioner*.

LOUISVILLE & NASHVILLE RAILROAD COMPANY

V.

EAST ST. LOUIS RAILWAY COMPANY.

On Oct. 22, 1904, the petitioner, the Louisville & Nashville Railroad Company, duly filed in the office of the Railroad and Warehouse Commission of the State of Illinois, its petition to prevent the East St. Louis Railway Company from crossing the tracks of its main line at grade on Seventh st. in the city of East St. Louis, in the county of St. Clair and State of Illinois. The commission thereupon caused due and legal notice of the filing of the said petition to be given to the respondent, the East St. Louis Railway Company, and fixed the date for said commission to personally examine said proposed crossing, for Oct. 24, 1904.

And on the 24th day of October, A. D. 1904, the Railroad and Warehouse Commission of the State of Illinois, together with the officers and attorneys of the petitioner and the respondent, personally examined the proposed crossing on Seventh st. in the city of St. Louis and all the surrounding territory, for the purpose of ascertaining whether a grade crossing should be permitted on the main line of the tracks of the Louisville & Nashville Railroad Company at Seventh st., and afterwards, on, to-wit, the 11th day of November, A. D. 1904, the respondent filed its answer to the petition of the Louisville & Nashville Railroad Company filed in said cause on Oct. 22, A. D. 1904. The commission

thereupon assumed jurisdiction of the subject matter of said petition and the parties thereto, and set the cause for hearing at the office of the said Railroad and Warehouse Commission in the city of Springfield, in the State of Illinois, on the 11th day of November, A. D. 1904. At the time and place fixed for said hearing, both the petitioner and respondent appeared before the said commission, by their respective attorneys, the Louisville & Nashville Railroad Company appearing by its attorney, J. M. Hamill, and the respondent, the East St. Louis Railway Company appearing by its attorney, M. W. Schaefer, and both parties having announced themselves ready to proceed with the hearing of the cause, the commission heard all of the oral and documentary evidence introduced by both parties. And after all the witnesses offered by both parties had been fully examined in reference to the matter, the commission heard argument of both counsel for petitioner and respondent, and the commission, not being fully advised, took the cause under advisement.

And now, on the 16th of November, A. D. 1904, at a meeting of the Railroad and Warehouse Commission at its office in Chicago, Ill., the commission now being fully advised and informed in the premises, find that the petitioner, the Louisville & Nashville Railroad Company, is operating a line of steam railway extending from East St. Louis, across the State of Illinois, and through the states of Indiana and Kentucky, to the city of Nashville, in the state of Tennessee, and that the line of railroad operated by it crosses Seventh st. in East St. Louis.

The commission further finds that the East St. Louis Railway Company is operating all of the electric lines of railway operated in the city of East St. Louis, and that it proposes to cross with its tracks the main tracks of the Louisville & Nashville Railroad Company on Seventh st. in said city of East St. Louis.

That said East St. Louis Railway Company is incorporated under the general incorporation laws of the State of Illinois, for the purpose of owning and operating an electric railway in the city of East St. Louis, and that the commission have jurisdiction and authority over such line of electric railway. The commission further find that the proposed crossing of the East St. Louis Railway with the main tracks of the Louisville & Nashville Railroad Company at Seventh st., in East St. Louis, is at the center of a seven-degree curve in the tracks of the said Louisville & Nashville Railroad. That on account of said curve, employes of petitioner in charge of its trains approaching Seventh st. crossing from either direction, could not see the electric cars at said crossing until said cars would be on the crossing, and the employes of respondent, in charge of its cars, approaching said Seventh st. crossing, from either direction, could not see the trains or locomotives of petitioner, from either direction, until such electric cars would be on such crossing.

That from Seventh st. westwardly to St. Clair av. in said city of East St. Louis, there is a very heavy ascending grade in the tracks of the Louisville & Nashville Railroad and from Seventh st. eastwardly, there is also an up-grade in the tracks of the said Louisville & Nashville Railroad Company. That on account of said curve and said grade, heavy

freight trains approaching said Seventh st. crossing from either direction, on the said Louisville & Nashville Railroad, could not be stopped at said crossing, and thereby there would be caused constant danger of collisions between trains of said petitioner and the electric cars of respondent, passing over said crossing.

The commission further find that to accommodate all the travel on respondent's road and its connections, a car would have to pass over said Seventh st. crossing every fifteen minutes, in one direction or the other.

That the petitioner runs many passenger and freight trains each way daily, over said crossing. That the number of electric cars on respondent's railway and the number of passenger and freight trains on petitioner's line would constantly increase; and that said crossing is within the yard limits, used for switching purposes by petitioner in its East St. Louis yards.

The commission further find that a grade crossing on Seventh st. in said city of East St. Louis would be a very dangerous crossing, and that that place is not a fit nor proper place for respondent to cross with its tracks the main line of petitioner's railroad, and that such crossing would unnecessarily impede or endanger the travel and transportation upon the main line of petitioner's railroad, and would unnecessarily endanger life and property both on petitioner's and on respondent's railroad, at said crossing.

The commission further find, that by an act passed by the General Assembly of the State of Illinois, entitled "An Act in relation to the crossing of one railway by another, and to prevent danger to life and property from grade crossings," approved May 27, 1889, in force July 1, 1889, it is provided that "hereafter any railroad company desiring to cross with its tracks the main line of another railroad company, shall construct the crossing at such place and in such manner, as will not unnecessarily impede or endanger the travel or transportation upon the railway so crossed. If in any case objection be made to the place or mode of crossing proposed by the company desiring the same, either party may apply to the Board of Railroad and Warehouse Commissioners, and it shall be their duty to view the ground and give all parties interested an opportunity to be heard. After full investigation, and with due regard to safety of life and property, said board shall give a decision prescribing the place where and the manner in which said crossing shall be made," etc.

From the personal inspection of the ground on which said proposed crossing would be located, made by this commission, and from the proofs introduced in evidence in this cause, the commission are clearly of the opinion that under the act above referred to, it is their duty to prohibit a grade crossing of the tracks of the petitioner's main line, at grade on Seventh st., in East St. Louis, as such crossing would be both unnecessarily dangerous to life and property and would unnecessarily impede or endanger the travel or transportation upon the main line of petitioners' railroad.

It is therefore ordered by the commission, that the respondent, the East St. Louis Railway Company, construct and build an overhead bridge

crossing over the railroad tracks and right-of-way of petitioner, the Louisville & Nashville Railroad Company, on which to lay its electric track or tracks, for the purpose of crossing over the main tracks and right-of-way of petitioner, the Louisville & Nashville Railroad Company, on, or immediately adjacent to Seventh st., in East St. Louis, such overhead crossing to leave, at least, full twenty-two (22) feet in the clear between the top of the rails of the petitioner's tracks and the lower part of the superstructure of said overhead bridge; said overhead bridge to be constructed and maintained so as not to in any way interfere with, impede, obstruct or delay the passage of trains, or interfere with, or endanger the lives or limbs of the employes of the petitioner, the Louisville & Nashville Railroad Company, while on the locomotive, cars or trains of petitioner, and passing under said bridge or viaduct, on and over the tracks of petitioner, at or under said bridge or viaduct, and adjacent to Seventh st. crossing in the city of East St. Louis; and said respondent, the East St. Louis Railway Company, is hereby ordered and directed, not to cross with its tracks the main line of petitioner, the Louisville & Nashville Railroad Company, on or adjacent to Seventh st., in said city of East St. Louis, in any other way than by an overhead or viaduct crossing, to be constructed and forever maintained by the said respondent, the East St. Louis Railway Company, over and across the right-of-way and railroad tracks of the petitioner, the Louisville & Nashville Railroad Company on or immediately adjacent to Seventh st., in said city of East St. Louis.

It is further ordered that the said respondent, the East St. Louis Railway Company, pay the entire cost of construction and maintenance of such overhead bridge or viaduct crossing, including all necessary approaches thereto; and that said respondent, the East St. Louis Railway Company, also pay all the cost of this proceeding before the said Railroad and Warehouse Commission.

Dated Jan. 5, 1905.

J. S. NEVILLE,
ARTHUR L. FRENCH,
Commissioners.

ILLINOIS CENTRAL RAILROAD COMPANY

V.

ST. LOUIS & SPRINGFIELD TRACTION CO.

AND

ST. LOUIS & NORTHWESTERN RY. CO.

Petition objecting to a crossing at grade near Litchfield, Ill., and requesting the commission to prescribe the place where and the manner in which a crossing shall be made.

September 13, 1905. Petition filed and respondent company served with a copy of the petition.

October 10, 1905. Place of the proposed crossing viewed by the commission.

Case still pending.

Before the order of the commission could issue, respondent companies forced a crossing and instituted proceedings for an injunction in the City Court of Litchfield asking that the petitioner the Illinois Central R. R. be enjoined from removing the crossing.

Injunction issued.

Appeal taken from the order of the city court to the Appellate Court with the following result.

Appellate Court decision:

ILLINOIS CENTRAL RAILROAD COMPANY, APPELLANT,

v.

ST. LOUIS & NORTHEASTERN RAILROAD COMPANY, APPELLEE.

November Term, 1905.

This is an appeal from an interlocutory order granting an injunction against appellant. On Oct. 16, 1905, appellee filed its bill in chancery against appellant and the city court thereupon ordered a temporary writ of injunction to issue without notice, which was issued and served upon appellant on the same day. On Oct. 28, 1905, the defendant filed with the clerk of the court an appeal bond which was approved by the clerk, in accordance with the statute providing "for appeals from interlocutory orders granting injunctions or appointing receivers."

The material averments of the bill are as follows: That complainant is a railroad corporation organized under the laws of Illinois and has located and is constructing its line of railway and is grading and laying the rails thereof between Staunton and Hillsboro, passing through the city of Litchfield; that in so constructing its railroad, complainant is compelled to cross divers steam railroad tracks and right-of-way already constructed or acquired by other railroad corporations between Staunton and Hillsboro, and that divers of said railroad corporations, particularly the C., B. & Q. Railway Company and the C., C., C. & St. L. Railway Company and the defendant, are unfriendly and hostile to complainant and are obstructing and endeavoring to obstruct complainant in the completion of its railroad by refusing to permit complainant to cross their tracks and by inciting other property owners to obstruct it; that the proposed railroad of complainant will be operated by electricity and is what is commonly called an "electric railroad;" that in its operation within cities and villages it performs the service of and is practically a street railway; that by reason thereof, property owners and business men of cities and villages through which it passes encourage and generally desire its construction through the business portions thereof and as much in the streets as possible; that, by reason of its motive power and method of

operation, much greater facilities will be afforded its patrons in passenger and freight service than is furnished by steam roads and that steam roads, generally harass and incite opposition to complainant to its inconvenience and injury; that in order to meet with the requirements of the city of Litchfield and its citizens and business men complainant located its line so as to pass over private property to within a quarter of a mile of the intersection of Sargent and Clinton sts., in the city of Litchfield, and thence over certain streets and alleys to the intersection of Sargent and Clinton sts., thence eastwardly about three blocks to State st., the latter being the principal business street of said city, and thence north on State st. to the north end thereof and around the city park and eastwardly on Water st. out of said city; that upon petition of property owners owning a majority of the frontage on said streets and of each mile thereof, the city council of said city passed an ordinance granting to the St. Louis & Springfield Railway Company, the assignor of complainant, the right to construct and operate its railway on Sargent st. from an alley next west of Clinton st. eastwardly to State st. and north thereon for a distance of four blocks and requiring said railway to be laid upon the established grade of said streets; that complainant made the necessary surveys, measures and levels for constructing its railroad in said streets and acquired its right-of-way over private property where required to connect with the points covered by said ordinance and has graded and constructed its railroad thereon and in the streets and alleys of said city to within about three hundred feet of the intersection of Sargent and Clinton sts., and has installed its permanent crossings over the tracks of the C., B. & Q. Railway Company and the defendant in Sargent st.; that the city of Litchfield is the owner in fee of Sargent st. and has heretofore permitted to be constructed across the same three certain railroad tracks now operated as steam railroads and possessed and controlled respectively by the Wabash Railroad Company, the C., B. & Q. Ry. Co. and the defendant company, and that said city also permitted certain other railroad tracks to be constructed across State st., which last mentioned tracks are possessed and operated by the C., C. & St. L. Ry. Co.; that each of said railroad tracks is constructed upon the grade of the street and are all practically on the same grade or level; that the tracks of the Wabash Railroad Company, the C., B. & Q. Railway Company and the defendant are at right angles to and across the tracks of the C., C. & St. L. Railway Company, about 350 feet north of Sargent st.; that in order to use and occupy Sargent st., under the terms of said ordinance, complainant will be compelled to cross the tracks of the Wabash Railroad Company, the C., B. & Q. Railway Company and the defendant in Sargent st., and of the C., C. & St. L. Railway Company in State st.; that the necessity therefor has been publicly known to the authorities of said city, county and State and of said four railroads for months; that since the passing of said ordinance complainant has been openly and publicly securing its right-of-way and grading and constructing its railroad, and complainant had well hoped that the other railroad corporations would so unite with complainant that no objection would be made to complainant crossing their respective tracks

in such manner as to enable complainant to construct and operate its railroad and comply with the wishes of the city of Litchfield and of its citizens and property owners; that complainant has applied to each of said corporations to permit it to construct and place at its sole expense such necessary crossings and appliances as would provide grade crossings over each of said railroad tracks and has offered to install the same at its sole expense and without any interference with the operation of the trains of said corporation; that it is entirely practical and safe to construct its railroad in Sargent and State sts. across said track and so as not to interfere with the operation of trains on the latter or to increase the hazard of travel over the same, and that the railroad of complainant will be operated by means of single cars; or, at the most, by trains but of a small number of cars, all capable of much quicker and easier control than steam cars, so that such operation will scarcely add more to the danger of operation of the other railroad tracks than the travel of an equal number of wagons upon said streets; that the Wabash Railroad Company has consented and agreed to the construction by complainant of such grade crossing with a connection by means of a "Y" track between the tracks of the Wabash Railroad and complainant, so as to furnish cars to be transferred from one track to another, and has entered into a contract to that effect; that each of the other railroad corporations, and particularly the defendant, has refused so to do, and threatened to forcibly resist the placing or maintenance and operation of any crossing by complainant over the tracks controlled by it and to remove any and all material now placed or which may hereafter be placed by complainant in any part of Sargent st. which is occupied with the tracks of the defendant; that the defendant, the C., B. & Q. Railroad Company and the C., C., C. & St. L. Railway Company, has each applied to the Board of Railroad and Warehouse Commissioners of the State of Illinois to act under the terms of the statutes in such case made and provided, and to compel complainant to cross said tracks at some other points and upon other grades than those required by said ordinance and to order that complainant shall go over or under said tracks; that the Wabash Railroad tracks are between those of the defendant and of the C., B. & Q. Railway and about one hundred and seventy-five feet from the same, respectively; that it is physically impossible to cross the tracks of the Wabash Railroad in Sargent st. at grade and make such "Y" connection as complainant has contracted with the Wabash Railroad Company to do, and to cross the tracks of the defendant and the C., B. & Q. Railway Company in Sargent st. other than at grade; that as complainant has exercised its power to locate its railroad under its articles of incorporation, it is advised that its right is exhausted and it cannot relocate the same upon another line so as to cross said tracks at other points than those specified in said ordinance; that the defendant is acting in concert with such other corporations in opposing complainant in the exercise of its rights as a common carrier and under the terms of said ordinance and in forcibly resisting the employes of said complainant in the construction of its railroad and in threatening to remove the material, crossings and tracks now placed by complainant in Sargent st. or which may here-

after be placed therein, and in applying to the Board of Railroad and Warehouse Commissioners of the State of Illinois to compel complainant to abandon its right under said ordinance and its right-of-way so acquired and to cross over or under the tracks of said company outside the city of Litchfield and at a point where it has no right-of-way, and where its right to acquire the same is doubtful in law; that its conduct is unreasonable and in fraud of the rights of complainant and is pursuant to a conspiracy between it and other corporations to prevent complainant from entering the business portion of the city of Litchfield as a competitor in business, and to enable them to maintain their present monopoly of the business of common carriers; that such conduct deprives complainant of its property without due process of law, and will constitute a permanent and irreparable injury to complainant; that complainant expressly denies that the Board of Railroad and Warehouse Commissioners have any right or authority to interfere with complainant in the construction of its road in Sargent st. under said ordinance.

The prayer of the bill is that a temporary injunction issue against the Illinois Central Railroad Company, its agents, etc., enjoining them and each of them from forcibly or otherwise removing from or in any manner obstructing complainant or its agents in completing, placing or using any crossing, rails, ties, fish plates, bolts, nuts, poles, wires or other appliances in Sargent st. as a part of any crossing of the railroad of complainant over any railroad track of the defendant in said street, and also from further prosecuting or making before the Board of Railroad and Warehouse Commissioners of the State of Illinois any objections to the crossing by complainant of the tracks of the defendant in Sargent st. in the manner prescribed by said ordinance; and upon a hearing that said temporary injunction may be made perpetual.

Attached to and made a part of said bill of complaint is a copy of the ordinance referred to therein, which grants to the St. Louis and Springfield Railway Company, and its assigns, the right to construct, maintain and operate for fifty years a railroad along certain public streets, including Sargent st., from State st. to Clinton st., which is to be operated by electricity or any other motive power permitted by the city except steam, and is to be used for the transportation of passengers, baggage, United States mail, express matter and freight. It provides that the tracks shall be composed of "T" rails and shall be laid on the grade now established or hereafter established. It also provides that "no right or privilege hereby conferred shall be deemed or considered so as to conflict or interfere with any rights or privileges now held, possessed or enjoyed by any person, company or corporation under any privileges or franchises heretofore granted by said city, to which rights all the rights hereby conferred shall be subject." It also provides that "it is expressly stipulated, however, that the work of constructing said track and appliances therewith connected shall not be commenced until the said railway company, its successors or assigns shall have completed and ready for operation a continuous line of interurban railway from

Hillsboro or Staunton to the limits of said city of Litchfield at some point where same connects with the right-of-way, as mentioned in section 1 of this ordinance."

Puterbaugh, P. J.:

The principal and controlling question presented by this record for determination is as to the proper construction and effect of section 209 of chapter 114 of the statute entitled, "An act in relation to the crossing of one railroad by another and to prevent danger to life and property from grades crossings," which reads as follows:

"That hereafter any railroad company desiring to cross with its tracks the main line of another railroad company, shall construct the crossing at such place and in such manner as will not unnecessarily impede or endanger the travel or transportation upon the railway so crossed. If in any case objection be made to the place or mode of crossing proposed by the company desiring the same, either party may apply to the Board of Railroad and Warehouse Commissioners, and it shall be their duty to view the ground and give all parties interested an opportunity to be heard. After full investigation, and with due regard to safety of life and property, said board shall give a decision prescribing the place where and the manner in which said crossing shall be made, but in all cases the compensation to be paid for property actually required for the crossing, and all damages resulting therefrom, shall be determined in the manner provided by law in case the parties fail to agree." (Rev. Stat. 1903, page 1479.)

It is insisted by appellant that under said Act, where objection to such crossing is made, a railroad company organized under the General Railroad Act of this State has no right to cross with its railroad track the main track of another railroad at a particular point selected by the company desiring to cross, unless the Railroad and Warehouse Commission approves the place and manner of the proposed crossing. Appellee, on the contrary, contends that the jurisdiction of the Railroad and Warehouse Commission can only be invoked where the proposed crossing is made in violation of the provisions of such act; that inasmuch as the record shows that the crossing in controversy is constructed "at such place and in such manner as will not necessarily impede or endanger the travel and transportation upon the railway so crossed," the intervention of the Warehouse Commission cannot be invoked. We do not so construe the act in question. Appellee having been organized as a railroad corporation, under chapter 114 of the statutes, is subject to all the provisions of the same, and is burdened with the same obligations, restrictions and limitations as other railroad corporations organized under such act, without regard to what motive power is or may be employed in the operation of its trains. (*Goddard v. Ry. Co.*, 104 Ill. App., 526; *Malott v. Ry. Co.*, 108 Fed. Rep., 313.)

The clear purpose of the act, when its title, language, the existing circumstances and contemporaneous conditions, the evil sought to be remedied, its necessity and the general objects sought to be attained are considered, is to require that crossings of this character shall be made at such places and in such manner as will not unnecessarily

impede or endanger travel or transportation upon the railroad crossed, and that when the question whether or not a crossing is made, or proposed to be made, complies with the statute in this regard is raised by objection, such question is relegated to the Railroad and Warehouse Commission for its final decision and is not one of fact to be determined by the courts.

We are inclined to construe the statute as meaning and intending, not that the commission shall indicate a particular place and no other at which the crossing shall be made, but that they shall have discretionary power only to prevent its being made at any place or in such manner as will unnecessarily impede or endanger travel on the existing line; that while, where objection is made, the commission may determine whether or not a particular crossing desired will be or is dangerous, in case of an adverse decision, the company seeking to cross still has the right to select another place or manner of crossing which, in case of the consent of the municipality and further objection, must in turn be approved by the commission. In other words, the power conferred upon the commission is in its nature that of veto merely. If this construction be reasonable and warranted, the exclusive power of the municipality over the streets within its corporate limits is not interfered with by the act. Its power to control the location of a railroad and to protect property and persons against injury still remains, no positive power being conferred upon the commission to permit a crossing to be made contrary to the will of the municipal authorities. Nor is the constitutional requirement that the consent of the local authorities of a municipality must first be obtained before the General Assembly shall grant the right to construct a street railroad therein to any extent thereby impinged upon. True it is that the commission may, in their discretion, prevent any crossing whatever to be made within the limits of a municipality, and if such interdictive authority can be said to abridge the exclusive jurisdiction of a city over its streets conferred by the "Cities, Villages and Towns" Act, section 209 must be held, we think, to impliedly repeal or modify such part of such former act as is inconsistent therewith or repugnant thereto. Furthermore, we think that such section may be upheld as an exercise of the inherent power of the State to enact all police laws necessary and proper to secure and protect the life and property of the general public, including not only those who may be resident of a particular municipality, but all who travel upon or entrust their property to the custody of railroads. To this extent the local police power of municipalities is clearly subordinate to that of the State.

In *Malott v. Ry. Co.*, 108 Fed. Rep., 313, appellee, an electric railroad company, organized under the General Railroad Act, sought to cross their track with that of a railroad of which appellant was receiver. It is there held that section 209, *supra*, must be construed as *pari materia* with sections 18 and 20 of the act of March 1, 1872, which provides generally for the exercise of power of eminent domain by railroads, and as making a valid provision for the modification of procedure under such prior statute, so far as relates to the place and manner of constructing railroad crossings, in the interest of greater safety.

It is insisted that if the foregoing construction be adopted, it will hereafter be practically impossible for electric railways to secure an entrance to any of our cities and villages; that such railway can not acquire the right to use any street of a city or village, for the reason that interested steam railroad companies can easily purchase the refusal of permits from property owners along a street and thereby prevent the use of the street by an electric railway; and that, if before any street can be used, the commissioners must locate the point of crossing for each railway to be crossed, and the electric railway must acquire the frontage signatures, it will mean that the existing monopolies will be preserved, and the public cannot have the transportation facilities demanded by it. In answer to such suggestion it may be said that if the hypothesis suggested be reasonable, and the powers granted the Railroad and Warehouse Commission are too vast and may be exercised in arbitrary manner, relief should and must be sought from the General Assembly, and not in the courts.

After the present appeal was perfected, appellee filed a motion in this court to dismiss the same for the reason that, as alleged, appellant, after the entry of the order appealed from, interposed and urged in the circuit court a motion to dissolve the injunction. Said motion must be overruled. Facts tending to show a release of errors cannot be considered on a motion to dismiss in the absence of a plea of release errors. (*Ry. Co. v. Siegel*, 161 Ill., 638; *Crosby v. Kiest*, 135 Ill., 458; *Trustees v. Hihler*, 85 Ill., 409.)

The foregoing views render a determination of the other questions raised and argued by appellant unnecessary. The interlocutory order granting the injunction will be reversed and the cause remanded to the city court, with directions to dismiss the present bill for want of equity.

Decree reversed and remanded with directions.

THE ROCKFORD BELT RAILWAY COMPANY

v.

THE ILLINOIS CENTRAL RAILROAD COMPANY.

Appearances—Henry C. Wood and A. D. Early, for petitioner; John G. Drennan and J. M. Dickinson, for the Illinois Central Railroad Company.

Petition was filed by the Rockford Belt Railway Company to cross at grade the tracks of the Illinois Central Railroad Company at a point within the city limits of the city of Rockford, Ill. Notice was given to the defendant, the Illinois Central Railroad Company, of the filing of the petition and they filed their answer denying the right of the petitioner to cross their tracks at grade, and the commissioners, after having notified both parties, viewed the ground and set the case for hearing at their office in Springfield, Ill., on the 18th day of July, 1905, and after a full hearing of the evidence, the argument of counsel of

the respective parties, and after a second viewing of the premises, and having fully investigated the facts and with due regard to the safety of life and property, have determined that the prayer of the petitioner for a grade crossing should not be granted and have decided that the proper place of crossing is at a point about three hundred and fifty (350) feet east of the point of the frog connecting the Illinois Central Belt tracks with its main track and that the manner in which said crossing shall be made shall be by means of a subway, with a clearance of not less than seventeen (17) feet between the lower part of the bridge of the Illinois Central tracks and the top of the rails of the Rockford Belt Railway tracks directly under said bridge.

It is therefore ordered and directed by the commission that petitioner raise, or cause to be raised, the roadbed and tracks of the said Illinois Central Railroad Company at said place of crossing as follows: Not more than five (5) feet at the place of crossing and to grade the same down in each direction so that the grade of said Illinois Central Railroad Company's tracks will not be more than a five-tenth grade and to construct, or cause to be constructed, at said crossing a standard steel bridge with concrete abutments, both bridge and abutments to be of the best kind and the proper size, such as is used by all first-class railroads in the State of Illinois in the construction of first-class roads, with a clearance of seventeen (17) feet. All of said work to be completed within one year from this date.

It is further ordered that the expense connected with or in any way pertaining to said crossing and the structure and the future maintenance and repairs necessitated thereby shall be borne by the petitioner, its successors or assigns.

The respondent, the Illinois Central Railroad Company, hereby before this commission agrees that if the Rockford Belt Railway Company shall faithfully and fully carry out and perform each and every one of its obligations, duties and conditions in this order prescribed, that it will waive all proceedings on the part of the Rockford Belt Railway Company to acquire said right of crossing under the eminent domain laws of this State.

And the Rockford Belt Railway Company hereby stipulates and agrees that it accepts and agrees to this order in every respect.

The commission hereby reserves to itself, jurisdiction of the parties and subject matter hereof until the full completion of the matters and things set forth for the purpose of carrying into full force and effect the terms and provisions of this order: *Provided, however*, that during the continuance of said work and for the period of one year said petitioners shall have the right to cross the main tracks of the Illinois Central Railroad Company in the mode and manner now being used by it and at the compensation now in force and effect.

It is further ordered that the costs and expenses of this proceeding, including the expenses of the commission, shall be borne by the petitioner.

J. S. NEVILLE, *Chairman*;
ARTHUR L. FRENCH, *Commissioner*.

ILLINOIS CENTRAL RAILROAD COMPANY

v.

COAL BELT ELECTRIC RAILWAY COMPANY.

Appearances—Mr. John G. Drennan, for petitioner; Hon. W. F. Forman, for respondent.

On the 22d day of July, 1907, an order was entered in the above entitled cause authorizing the respondent to cross at grade with its tracks as located in the center of Park av., in the city of Herrin, Williamson county, Ill., the tracks of the petitioner, the Illinois Central Railroad Company, and it was required to install and maintain an interlocking system at said crossing substantially in accordance with certain plans which were submitted to the commission on July 9, 1907.

On Aug. 29, 1907, the petitioner filed its supplemental petition in said cause alleging in substance that on Aug. 27, 1907, the respondent filed a bill in the Circuit Court of Williamson county, Illinois, in which it prayed for and, upon the order of the Master in Chancery of said court, obtained an injunction enjoining the petitioner from in any manner preventing said responding from putting in the said proposed crossing; that said petitioner did on Aug. 27, 1907, with force and arms actually put in at said place mentioned in the former order of this commission, the crossing therein authorized; that no interlocking device has been installed at the said crossing, and that petitioner is informed and believes, and therefore charges the fact to be, that the respondent intends to commence the operation of its trains over said crossing without installing the interlocking plant mentioned in the order of the commission on July 22, 1907.

Upon the filing of this supplemental petition a citation was issued to the respondent requiring it to appear before the commission on Sept. 3, 1907, and answer said supplemental petition.

On Sept. 3, 1907, the parties appeared before the commission at its office in Springfield, Illinois, where the charges in the supplemental petition were admitted by the respondent to be true, but it was contended that the respondent had no intention of operating trains over said crossing until it had first complied with the former order of this commission. It appeared from the statements made that the respondent was constructing or about to construct, a depot building on Park av. near the Illinois Central tracks, and permission was asked to transfer cars over said crossing containing material for said proposed depot by horse power.

It was further contended by the petitioner that it owned a right-of-way one hundred feet wide over and across Park av., and that the respondent had no legal right to cross its tracks without first condemning a right-of-way. This, of course, presents a question upon which this commission has no power to pass. The former order of the commission authorizing the crossing to be constructed was, of course, upon the condition that the respondent obtained the necessary right-of-way by agreement or by con-

demnation proceedings. On the question of whether the petitioner has any rights in Park av., which the respondent would be required to acquire, either by purchase or condemnation before constructing this crossing, we do not express any opinion.

It is therefore ordered and decided by the commission that the respondent refrain from operating cars or trains over said crossing until it has complied with the requirements of the former order of this commission entered on July 22, 1907, except that it is authorized for the period of sixty days from this date to transfer cars loaded with material to be used in the construction of respondent's depot, over and across said crossing by animal power.

Dated this third day of September, A. D. 1907.

W. H. BOYS, *Chairman*;

J. A. WILLOUGHBY, *Commissioner*;

B. A. ECKHART, *Commissioner*.

CAIRO & THEBES RAILROAD COMPANY

v.

EASTERN ILLINOIS AND MISSOURI RAILROAD CO.

CHICAGO AND EASTERN ILLINOIS R. R. Co.

AND

ILLINOIS CENTRAL R. R. Co.

Appearances—J. M. Hamil and Wm. S. Dewey, for petitioner; E. H. Seneff, for C. & E. I. R. R. Co.; John G. Drennan, for I. C. R. R. Co.; Walter Warder, for Cairo Commercial Club.

The material allegations contained in the petition in the case, which was filed in the office of the commission on Jan. 23, 1907, are as follows:

The petitioner, the Cairo and Thebes Railroad Company, is a steam railroad corporation, organized under the laws of the State of Illinois, with power to construct, maintain and operate a railroad from the city of Cairo, in Alexander county, in a northwesterly direction to the village of Thebes, in the same county, a distance of about 24 miles, and that said railroad is now being constructed; that the Eastern Illinois and Missouri Railroad Company is a steam railroad corporation organized under the laws of the State of Illinois and is the owner of a line of railroad extending from the city of Marion, in Williamson county, to the village of Thebes, and that said railroad is now being operated by the Chicago & Eastern Illinois Railroad Company under a lease; that the petitioner desires to cross at grade the main line of the Eastern Illinois and Missouri Railroad Company near the town of Santa Fé, at a point particularly described in the petition, and that such crossing will not unnecessarily impede or endanger the travel or transportation upon the railroad so crossed and will not unnecessarily endanger life or property.

The respondents were duly notified of the filing of this petition and in accordance with the requirements of the statute, the commission viewed the place of the proposed crossing on Feb. 13, 1907. On March 1, 1907, the Illinois Central Railroad Company filed a petition asking to be allowed to intervene in said cause and to be made a party defendant, on the ground that said railroad, by virtue of the provisions of a certain contract entered into with the Chicago and Eastern Illinois Railroad Company on March 27, 1902, obtained certain trackage rights for a period of 999 years over the Eastern Illinois and Missouri Railroad between Olive Branch and Thebes, and consequently over said line at the point of the proposed crossing. The prayer of the petition was granted and the Illinois Central Railroad Company made a party defendant.

Answers were duly filed by the Chicago and Eastern Illinois Railroad Company and the Illinois Central Railroad Company wherein it is insisted that due regard for the safety of life and property requires that the grades be separated at the point of crossing; that it is entirely practicable and that the petitioner should be required by the order of this commission to cross the respondent's road by means of an overhead crossing.

The case was set down for hearing on March 5, 1907, at the office of the commission in Springfield, at which time all interested parties being represented, a large number of witnesses were examined, both by the petitioner and the respondents. Upon the conclusion of the evidence and by agreement of the parties the oral arguments were postponed until March 13, 1907, and by consent of all the parties interested, Mr. Walter Warder, representing the Cairo Commercial Club, was permitted to argue the case orally.

On March 11, 1907, a communication from Mr. H. I. Miller, president of the Chicago and Eastern Illinois Railroad Company, addressed to the commission, was filed with the secretary. In this communication Mr. Miller, representing the Chicago and Eastern Illinois Railroad Company and the Illinois Central Railroad Company, proposed to lower the grade of their railroad track at the proposed point of crossing three feet, without expense to the petitioner and to waive condemnation proceedings, provided the petitioner constructed or was required to construct an overhead crossing.

It is, as we understand, conceded by all of the parties interested, that the construction of an overhead crossing at the point of intersection is practicable; that is, that such crossing can be constructed, but it is contended by the petitioner, among other things, that the cost of separating the grades at this point would seriously cripple it in the building of the proposed line, if, indeed, it did not cause an abandonment of the enterprise.

The proposed point of crossing is a short distance southeast of the town of Santa Fé, in Alexander county. At this point respondent's road, generally speaking, runs in a northerly and southerly direction and the proposed road of the petitioner will be constructed in an easterly and westerly direction. The road of the petitioner, south of the proposed point of crossing, will be constructed for a considerable distance over low,

swampy land, much lower than the land at the point of crossing, and in approaching the crossing from the south, the track of the petitioner will be laid on a grade of three-tenths of one per cent for a considerable distance, in order to reach the present grade of the respondent's road at the crossing.

On the part of the petitioner a number of civil engineers testified that the cost of a grade crossing, at the point in question, would be \$65,916.50 and the cost of an overhead crossing would be \$563,234.73, the difference between these two sums, \$497,000.00 approximately, being the cost of an overhead crossing over and above the cost of a grade crossing. These figures were based on the assumption that the grade of petitioner's road approaching the summit of the overhead crossing should not exceed three-tenths of one per cent, that being the maximum grade adopted by the company in laying out its line. On the part of the respondents several engineers testified that a grade crossing would cost \$126,147.00 and the cost of an overhead crossing would be \$239,581.00, the difference being \$113,434.00. They also testify that a four or five-tenths grade would be entirely practicable and feasible and would cost considerably less than the amount above mentioned. This wide difference of opinion may be explained in part by the following facts appearing from the evidence: According to the grade adopted by the petitioner, its line at a point 4,000 feet south of the proposed crossing would be from twelve to thirteen feet below the grade at the crossing, consequently if it should be required to go over the respondent's line and elevate its tracks at the crossing so as to give the necessary clearance for trains on the respondent's road, the embankment, because of its height, would have to be extended for a considerable distance to the south and would be about three and one-third miles in length, all told. On the other hand, it was contended by the respondents that the land south of the crossing was subject to overflow from the Mississippi river and that if the road of the petitioner at a point 4,000 feet south of the crossing was laid on a grade twelve or thirteen feet below the grade at the proposed point of crossing, it would, in times of floods, be several feet under water; consequently the respondents based their estimate upon a grade which their evidence tended to show would be about two feet above high water mark, it being contended that whether the crossing was grade or overhead, the road of petitioner south of the crossing would necessarily have to be constructed on a grade which would be out of reach of the water during the season when the surrounding territory was flooded.

After the conclusion of the evidence and at the suggestion and request of counsel for the respective parties, the commission directed its consulting engineer to personally inspect the place of the proposed crossing and the surrounding territory and prepare and present to the commission an estimate of the cost of separating the grades at this point, which was accordingly done. From this estimate thus prepared, it appears that the cost of a grade crossing would be \$48,422.21 and the cost of an overhead crossing \$386,650.28, the excess for an overhead crossing over the cost of a grade crossing being \$338,228.07. It also appears that should

the respondents depress their track three feet, in accordance with the proposition of Mr. Miller, above referred to the cost would be \$295,-162.36 for an overhead crossing over the cost of a grade crossing.

In view of the serious conflict in the evidence, only partially explained by the different bases of the estimates, we are disposed to accept the figures presented by the consulting engineer of the board as correct.

Under the law as it now stands, this commission is not authorized to apportion the cost of separating grades at railroad crossings, but the entire cost must be borne by the road seeking to cross.

The question then is, shall the petitioner be required to construct an overhead crossing at this point, at an expense of nearly \$300,000.00, or may a grade crossing, properly protected by the most improved interlocking device, be permitted? And if so, would such action be consistent with the proper protection of life and property and the rights of the senior road?

The statute conferring jurisdiction upon this commission "to prescribe the place where and manner in which crossings shall be made" was passed in the year 1889. As has been suggested in former opinions of the commission, a reading of the statute plainly demonstrates that it was not the intention of the Legislature to prohibit the construction of grade crossings in all cases. It was undoubtedly considered that cases would arise where it would be entirely proper to permit the construction of such crossings, protected, either by interlocking devices or only by a compliance with the provisions of the statute requiring all trains, when approaching a crossing with another railroad upon the same level, to come to a full stop before reaching such crossing. If there has been any change in the public policy of the State in this regard since the passage of the act of 1889, it has not been evidenced by any action on the part of the Legislature.

An examination of the decisions of this commission, rendered after the passage of this act, will show that in certain cases it has been deemed proper to permit grade crossings to be constructed, in some cases with and in some cases without, interlocking devices to protect the same, while in others a separation of grades has been required, each case being decided on its own merits without attempting to lay down a rule applicable to all cases. We think it must be admitted, however, that in later years the general rule adopted by our immediate predecessors has been to separate all grades, where the circumstances of the case would permit, and where by reason of the frequency of the passage of trains over the proposed crossing, or for other reasons, life and property could not be otherwise adequately protected. And with this general rule we are in entire accord, believing, as we do, that the mere question of expense should not be considered as of controlling importance where the number of trains to be operated over the proposed crossing, or other conditions surrounding the case, would prevent the proper protection of life and property.

The location of petitioner's road, its length, the population of the cities along its line and its connection with other railroads, leads to the conclusion that its traffic will not be very heavy or its trains numerous, at least for many years to come. The evidence discloses that a comparatively

small number of trains are now operated by the respondents over their line at the proposed point of crossing. It also discloses that if a grade crossing is permitted, a train on such crossing can be seen for a distance of at least 2,000 feet from either direction on the respondent's road and for a greater distance on the petitioner's line.

In view of these facts and the large expense of an overhead crossing to the petitioner, we are of opinion that with the installation of the most improved interlocking device, a grade crossing should be permitted, as asked for in the petition. And we are further of opinion that such manner of crossing at the place mentioned will not unnecessarily impede or endanger the travel or transportation upon the respondent's railroads.

It is therefore ordered and decided that petitioner, the Cairo & Thebes Railroad Company, have leave to cross with its tracks at grade the track of the respondent, the Eastern Illinois & Missouri Railroad Co., now operated by the respondents, the Chicago & Eastern Illinois Railroad Company and the Illinois Central Railroad Company, at the place and in the manner specified in the petition on file in this cause, the right-of-way for such crossing being first obtained as provided by law.

It is further ordered and decided that such crossing be protected by a proper and adequate interlocking device, to be installed, maintained and operated by and at the expense of the Cairo & Thebes Railroad Company; that said Cairo & Thebes Railroad Company cause to be prepared and presented to this commission, without unnecessary delay, complete and detailed plans and specifications of the interlocking plans proposed to be installed at said crossing, for the approval of this commission and that in the operation of such device and the use of such crossing, trains on the respondents' road shall be given preference over trains of the same class on the petitioner's road. This cause will be taken under advisement and a final order entered upon the presentation of plans and specifications for such interlocking plant and the approval of the same.

W. H. BOYS, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

April 22, 1907.

THE SPRINGFIELD BELT RAILWAY CO.

v.

CHICAGO & ALTON RAILROAD CO.

Appearances—Shutt, Graham & Graham, for petitioner; Mr. James Miles, for respondent.

The petition in this case was filed Jan. 27, 1907, and it is alleged, among other things, that the petitioner is a corporation organized under the laws of this State; that it is engaged in constructing a belt line of railroad around the city of Springfield, and has located and surveyed its route and obtained a portion of the necessary right-of-way; that said

route crosses the right-of-way and tracks of the respondent at Iles, Ill., and at a point about 200 feet south of the present crossing of the Wabash Railroad Company over the respondent's tracks; that it desires to cross respondent's tracks at grade and is willing to be at the entire expense of putting in said crossing and maintaining and operating the same; that there is an interlocking plant at the point where the Wabash Railroad Company crosses respondent's tracks at grade and it is willing that its tracks be connected with such interlocker at its expense and offers to pay any additional expense that may be necessary in the operation of such interlocker.

The place of the proposed crossing was viewed by the commission on March 4, 1907, and the case set for hearing on March 5, 1907, at the office of the commission in Springfield, Ill., at which time and place the evidence offered by the parties was heard and the cause taken under advisement. Subsequently, on the application of respondent, leave was granted the parties to introduce further testimony and re-argue the case on May 7, 1907.

At the proposed point of crossing the respondent has two tracks running almost due north and south. The proposed line of the petitioner will cross these tracks at right angles. The surface of the ground in the immediate vicinity of the proposed crossing is nearly level. It is claimed by the petitioner that the expense of constructing an overhead crossing at this point will be very large and that inasmuch as the Wabash Railroad Company crosses respondent's tracks at grade 200 feet north of its proposed crossing, that therefore no good reason exists why it should not be permitted to connect with the interlocker at the Wabash crossing and also cross at grade.

The evidence as to the cost of an overhead crossing (it being conceded by both parties that a subway is not feasible), as is usual in such cases, is not very satisfactory. That on the part of the respondent, being to the effect that the overhead crossing can be put in for about \$20,000.00. On the other hand, the evidence offered by the petitioner tends to show that to cross these tracks by an overhead crossing would cost about \$150,000.00.

We are inclined to the opinion that a proper and suitable crossing with a working gradient would cost more than the estimate of the respondent and very much less than the estimate of the petitioner. In the view we take of the matter, however, it is not necessary to determine what the exact cost would be; suffice it to say that it will not be so large as to have any very great bearing on the question to be decided.

The uncontradicted evidence in the case shows that there are, at the present time, fifty-two train movements per day over respondent's road at the point of the proposed crossing. Respondent's Murrayville line branches from the main line a few hundred feet south of the proposed crossing and when it is opened about July 15th, there will be added ten regular trains, making a total of at least sixty-two train movements every twenty-four hours.

The petitioner's line is being constructed around the city of Springfield to connect its line running south of Springfield with its line or

lines running north, and this is made necessary by the fact that it cannot haul freight through the city, its tracks being laid in the public streets. The evidence does not show how many cars or trains on petitioner's road would pass over this proposed crossing in twenty-four hours, but if its projectors' expectations are realized the number will not be inconsiderable.

Under these facts, should this commission consent to a grade crossing at the point in question? The proposition of petitioner to join with the respondent and the Wabash Railroad Company in the separation of the grades of the three roads at this point is not without merit; however, the Wabash Railroad Company is not a party to this proceeding and therefore this commission has no power to make or enforce an order compelling it to join in such an arrangement. Such being the case, would the mere fact that the Wabash Railroad Company crosses the respondent's tracks at grade within 200 feet of the proposed crossing justify the commission in allowing the petitioner to cross at grade? If so, then another crossing might be permitted in the same vicinity and still another and so on *ad infinitum*.

The statute governing this proceeding is in part as follows:

"That hereafter any railroad company desiring to cross with its tracks the main line of another railroad company shall construct the crossing at such place and in such manner as will not unnecessarily impede or endanger the travel or transportation upon the railroad so crossed."

After full investigation, and with due regard to the safety of life and property, said board shall give a decision prescribing the place where and the manner in which said crossing shall be made. * * *

We do not feel that we would be giving due regard to the safety of life and property should we permit a grade crossing at this point, nor are we prepared to say that such crossing would not unnecessarily impede or endanger the travel or transportation on the respondent's road.

Grade crossings where trains are numerous, no matter how thoroughly they may be protected by interlocking devices, are dangerous. Notwithstanding the great skill and ingenuity displayed by the manufacturers of these devices in perfecting them and the strict orders of the railroad companies to their employes regarding their use, accidents do occur, and this largely because of the fact that what may be called the "human agency" is ever present, and no device has yet been invented by which it may be entirely eliminated. Cases have been presented in the past and may arise in the future, where the commission would feel justified, all the facts and circumstances considered, in permitting grade crossing to be constructed, but as far as we are able to discover, not one of the elements which would justify such action can be found in this case.

It is therefore ordered and decided that the Springfield Belt Railway Company have leave to cross the tracks of the Chicago & Alton Railroad Company at Iles Junction, at the point mentioned in the petition filed herein, by means of an overhead crossing; that said overhead

crossing shall leave twenty-two (22) feet in the clear between the top of the rails of the Chicago & Alton Railroad and the lower part of the superstructure of said overhead crossing; that the petitioner pay the entire cost of the construction and future maintenance of said overhead crossing, and also the costs and expenses of the commission incurred in this cause.

Dated this 29th day of May, 1907.

W. H. BOYS, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

DECATUR, SULLIVAN & MATTOON TRANSIT COMPANY

v.

VANDALIA RAILROAD COMPANY.

Appearances—For complainant, Mr. Clokey; for respondent, Mr. W. C. Outen.

The petitioner in this case is organized under the general railroad laws of this State, and, the road, when built, is to be operated by electricity. The line will extend from Decatur to Mattoon, a distance of about fifty miles.

It is proposed by the petitioner to cross the main track of the respondent at Hervey City and the only question in the case is, whether or not such crossing shall be at grade.

It appears from the evidence submitted that the respondent and the Illinois Central Railroad Company jointly own and operate a railroad track between Decatur and Hervey City. From this latter point the respondent operates a line extending in an easterly direction through Arcola while the line of the Illinois Central Railroad Company runs in a southeasterly direction through Mattoon.

The point of crossing selected by the petitioner is at or near the junction of the lines of the respondent and the Illinois Central Railroad Company.

When the road of the petitioner is put in operation it is proposed to run about thirty cars or trains over this crossing every twenty-four hours. During the past year the average number of trains passing over this part of the respondent's road each day is shown to have been from ten to twelve and the prospects for the immediate future are that this number will be increased rather than diminished.

It is not claimed by the petitioner that an overhead crossing can not be constructed at this point. Indeed, the evidence in the case and our views of the premises convince us, that the conditions are most favorable for the construction of such a crossing. There is a slight rise in the ground both to the north and the south of respondent's line, which would

materially lessen the cost of such a structure, and it was agreed upon at the hearing, that the cost of an overhead crossing would probably not exceed the sum of \$20,000.00. This, when compared with the cost of installing, maintaining and operating an interlocking plant at this point, seems to us to be not only the better, but the cheaper plan, but whether this is true or not can not make any difference. All agree that grade crossings are a source of danger to life and property and where a considerable number of trains are to be moved over the crossing daily, and the cost of separating the grades is not excessive, such crossings should not be permitted.

A "Y" track connects the respondent's track with the tracks of the Illinois Central Railroad Company, and the petitioner proposes to cross this "Y" track at a point about 1,200 to 1,500 feet southwest of the proposed crossing over the main line. This track is rarely used, it being shown that the exchange of cars would average not more than five (5) per month, nor is it claimed by anyone that any necessity exists for separating the grades at this point.

We are therefore of opinion that due regard for the safety of life and property requires that an overhead crossing be constructed by the petitioner over the main track of the respondent, but that no necessity exists for such a crossing over the "Y" track.

It is therefore ordered and decided that the Decatur, Sullivan and Mattoon Transit Company have leave to cross the main tracks of the Vandalia Railroad Company at Hervey City at the point mentioned and described in the petition filed herein, by means of an overhead crossing; that said crossing shall be so constructed as to leave twenty-two (22) feet in the clear between the top of the rails of the Vandalia Railroad Company and the lowest part of the superstructure of said overhead crossing; that said petitioner also have leave to cross the "Y" track connecting the Vandalia Railroad Company with the Illinois Central Railroad Company at the point mentioned in said petition, at grade, and that leave be granted the respondent to apply to the commission at any time hereafter for an order requiring the protection of said grade crossing by derail or otherwise in case it deems such action necessary for the protection of life or property.

It is further ordered that the petitioner pay the entire cost of the construction and future maintenance of said overhead crossing and grade crossing, and also the costs and expenses of the commission incurred in this cause.

Dated this 19th day of July, A. D. 1907.

W. H. BOYS, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

ATCHISON, TOPEKA AND SANTA FE RY. CO.

V.

ELGIN, JOLIET AND EASTERN RY. CO.

Appearances—For the A., T. & S. F. Ry. Co., Mr. C. A. Morse, Chief Engineer; for the A., T. & S. F. Ry. Co., Mr. Thos. S. Stevens, Signal Engineer; for the E., J. & E. Ry. Co., Mr. R. W. Campbell, Attorney; for the E., J. & E. Ry. Co., Mr. R. D. Campbell, General Manager.

The Chicago, Santa Fé and California Railway Company being the owner of a line of railroad extending through Coal City, Illinois, on the 3d day of October, 1888, entered into a contract with the Gardner, Coal City and Northern Railway Company granting to the latter named road "the right to lay down, maintain and operate its two main tracks of standard gauge over and across the track of the Chicago, Santa Fé and California Ry. Co. near the western limits of Coal City, Illinois" upon certain terms and conditions in such contract expressed. The contract, by its express terms, extends to and is binding upon the respective successors and assigns of the parties. The Atchison, Topeka and Santa Fé Railway Company succeeded the Chicago, Santa Fé and California Railroad Company and the Elgin, Joliet and Eastern Railway Company succeeded the Gardner, Coal City and Northern Railway Company.

It is provided in the contract among other things that if at any time a difference of opinion between the parties shall arise as to the rights and duties of either, the question in dispute shall be referred to a board of arbitrators to be selected in the manner therein provided. Such difference of opinion having arisen, this commission, at the request of both of the parties, consented to act as arbitrators, and the contentions of the respective parties were submitted to the commission at its regular meeting in Chicago on the 9th instant.

It appears that at the present time, the Santa Fé Company has two main tracks at the point of crossing, and the Elgin, Joliet and Eastern Railway Company has but a single track, although by the terms of the contract it was entitled to construct two tracks.

The contract in question contains the following provisions:

"*First*—That the first party (Santa Fé Company) shall not be disturbed in the use of the tracks now owned and operated by it at the point of crossing aforesaid, and said party of the second part (Elgin, Joliet and Eastern Company) agrees that nothing shall be done or suffered to be done by it, that shall in any manner materially impair the usefulness of said existing track of the party of the first part of such track or tracks as may hereafter be constructed by the said party of the first part as hereinafter provided.

"*Second*—It is understood and agreed between the parties hereto that the said party of the first part shall have the right to lay down, maintain and operate one or more tracks in addition to its present main track, at the point of said crossing.

Third—The said party of the second part agrees that it will furnish the material for, and construct, put in and maintain all crossing frogs, and will furnish and put in at their own cost and expense all crossing signals, gates, targets and other fixtures and interlocking devices necessary to enable the said first party to run its trains over said crossing without stopping. The interlocking system used to be that of the Union Switch and Signal Company, or of such other system as may be approved by the party of the first part, and the party of the second part will make necessary application to obtain the approval of the same by the Railroad and Warehouse Commissioners of the State of Illinois and diligently prosecute the same * * *."

Fourth—It is further agreed that the cost and expense of maintaining and operating the said interlocking system shall be borne jointly by the parties hereto; the party of the first part paying one-third, and the party of the second part two-thirds of such cost * * *."

The difference of opinion between the parties arises out of the following facts: The Santa Fé Company is desirous of constructing two passing tracks at Coal City, one on the north side of its main tracks and one on the south side. It is, we think, conceded by both parties that it is impracticable to extend these passing tracks across the Elgin, Joliet & Eastern main track. Because of that fact the Santa Fé Company proposes to shorten its passing track on the north side of its main track several hundred feet and connect the east end of such track with a very short distance west of the crossing and within the limits of the interlocking device there maintained. It is then proposed to put in a crossing between the main tracks and build its south passing track east of the Elgin, Joliet & Eastern crossing, the west end of such track and the switches connecting it with the main track, all being within the limits of the interlocker.

On these facts, it is contended by the Santa Fé Company, that under the contract it is the duty of the Elgin, Joliet & Eastern Company to connect the switches and derails at the end of its north passing track, and at the west end of its south passing track, and the necessary switches to operate the crossover with the interlocking plant, at its own expense, and to maintain and operate the additional levers required, under the terms of the contract—that is to say, that it, the Elgin, Joliet & Eastern Company shall, in addition to connecting such switches and derail with the interlocker at its own expense, pay two-thirds of the cost of maintaining and operating the additional levers required.

On the other hand, it is contended by the Elgin, Joliet & Eastern Company that under the terms of the contract, it cannot be required to connect any of the switches or derails in question with the interlocker, and this for the reason that none of the proposed tracks will cross its main track.

It admits, at least, so far as this case is concerned, that if any or all of the proposed tracks crossed its main track it would be required to furnish and put in the necessary frogs, erect the necessary signals and make the necessary connections with the interlocker.

It will thus be seen that the only question submitted to this commission for decision is purely a legal one and relates entirely to the question of the proper construction of the contract between the parties.

We think there could be no question as to the right of the Santa Fé Company to extend both of the proposed passing tracks over the track of the Elgin, Joliet & Eastern Company, and, should it elect so to do, it would undoubtedly be the duty of the latter company to furnish, put in and maintain the necessary crossing, and make the proper connections with the interlocker. Such action on the part of the Santa Fé Company would not only cause an immediate expenditure of a considerable sum of money by the Elgin, Joliet & Eastern Company, but it would be a continuing expense, and would, of course, increase the danger to the life and property at the crossing.

Whether or not, in consideration of the waiver by the Santa Fé Company in the interests of safety, of its right to construct its tracks as above suggested, the Elgin, Joliet & Eastern Company should, as a matter of equity, accede to the demands of the Santa Fé Company, is a question which, we understand, is not submitted to us for determination. The Elgin, Joliet & Eastern Company stands upon all of its legal rights, and such being the case, we are of the opinion that under the provisions of the contract above quoted (they being the only ones pertinent on the question here considered), the Elgin, Joliet & Eastern Company cannot be required to do or perform any of the acts or things contended for by the Santa Fé Company. It would serve no useful purpose to further extend this finding by giving in detail the process of reasoning by which we have arrived at this conclusion; suffice it to say, that applying the ordinary rules of construction to the above quoted provision of this contract, we are of the opinion that the legal duty of the Elgin, Joliet & Eastern Company to do and perform the things therein mentioned on its part to be done and performed arise only, when the Santa Fé Company constructs or desires to construct a track or tracks across the Elgin, Joliet & Eastern tracks.

Dated this 17th day of May, A. D. 1907.

W. H. BOYS, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

ILLINOIS CENTRAL R. R. Co.

V.

PITTSBURGH, FT. WAYNE & CHICAGO RY. CO. AND ITS LESSEE, THE
PENNSYLVANIA CO.; LAKE SHORE & MICHIGAN SOUTHERN
RY. CO., NEW YORK, CHICAGO & ST. LOUIS RY.
CO., AND THE CITY OF CHICAGO.

Appearances—For I. C. R. R. Co., J. M. Dickinson, John G. Drennan; for N. Y. C. & St. L. Ry. Co., Glennon, Cary, Walker & Howe;

for L. S. & M. S. Ry. Co., Glennon, Cary, Walker & Howe; for P., Ft. W. & C. Ry. Co., Loesch, Scofield & Loesch; for Penn. Co., Loesch, Scofield & Loesch.

The petition in this case was filed in the office of the secretary of the commission on June 6, 1907, and it is alleged that the petitioner, the Illinois Central Railway Company, is a railroad corporation organized under and by virtue of the laws of the State of Illinois; that it owns and operates about 2,100 miles of railroad within the State and an equal number of miles of railroad in other states; that its principal terminal for its system of railroad extends from Randolph street in the city of Chicago to the southern city limits; that its main line and tracks cross the main line and tracks of the respondents at grade at or near Grand Crossing in said city; that about 100 of petitioner's suburban trains, and about sixty through passenger trains cross the respondents' tracks at Grand Crossing daily, and that in addition thereto an aggregate of about 3,500 freight cars are daily moved by petitioner and its lessees over this crossing; that petitioner is informed and believes and charges the fact to be that the respondent railroad companies operate a larger number of passenger and freight trains over said crossing daily than does petitioner.

It is further alleged that on the 29th day of September, A. D. 1902, the city of Chicago passed an ordinance, requiring the petitioner and respondents to elevate their tracks at Grand Crossing, and that all of the parties to this cause accepted said ordinance and that it is binding upon each and all of them; that if the tracks of petitioner and respondents are elevated in accordance with the provisions of said ordinance without the grade of petitioner's and respondent's tracks being separated "said portion of the tracks of your petitioner and said portion of the tracks of each of the defendant railroad companies, at and in the vicinity of said Grand Crossing, will be in an unsafe condition and dangerous to the security of persons doing business therewith as passengers upon the respective railroads which are parties hereto; that a grade crossing of all of said railroad tracks, when elevated in accordance with the terms and conditions of said ordinance, will render the operation of their trains unsafe and places in constant peril all passengers carried on the passenger trains of said railroad passing along and over their respective tracks at and in the vicinity of said Grand Crossing; and will be unsafe and dangerous to the security of the employes of your petitioner and the defendant railroad companies operating their freight and passenger trains."

It is also alleged that petitioner has endeavored to reach an agreement with the respondents, relative to the separation of grades at this point but has been unable to do so. A plan for the separation of grades is then set forth in detail, and the prayer is "that an order may be made by your honorable body in accordance therewith for the elevation of said railroad tracks at and in the vicinity of said Grand Crossing, as may be deemed just in the premises, to the end that the grade of your petitioner's tracks and the grade of the defendant companies' tracks shall be separated."

Due and proper notice of the filing of the petition was given to each of the respondents, and on the 5th day of July, 1907, the Lake Shore and Michigan Southern Railway Company filed its answer admitting all of the material allegations of the petition and joining in the prayer of the petition as above set forth. On the 9th day of July, 1907, a like answer was filed by the New York, Chicago & St. Louis Railway Company. No appearance was entered nor answer filed by the city of Chicago.

On June 26, 1907, the Pittsburg, Ft. Wayne & Chicago Railway Company and the Pennsylvania Company filed a motion to dismiss the petition for the following reasons:

"(1) That the said Railroad and Warehouse Commission of the State of Illinois has not jurisdiction under the laws of the State of Illinois of the subject matter of said petition;

"(2) That the said commission is not authorized by the statutes of the State of Illinois to consider and hear the subject matter of said petition;

"(3) That the said commission is not authorized by the laws of the State of Illinois to grant the prayer of said petition, or any part thereof."

The question presented by this motion is an important one, and, as far as we are advised, has never been directly passed upon by this commission nor any of the courts of this State. Briefly stated, the question is: has this commission the power to compel the separation of the grades of two or more railroads, at crossings heretofore constructed on the same grade, on the petition of one of the railroads interested?

This commission is a creature of the statute, and unless power or jurisdiction to enter the order asked for by the petitioner, is conferred upon us, either expressly or by necessary implication, the motion to dismiss must be sustained.

Indeed it has been held that railroad commissions possess no power except such as is expressly conferred by the statutes. See *Railroad Commissioners v. Oregon Railway and Navigation Co.*, 17 Ore., 65, where it is said:

"The jurisdiction of such commission is not given by implication. Commissioners of that character are mere creatures of statute, and possess no power except what the statute expressly confers upon them * * *. It is not, it seems to me, requiring too much of the legislative branch of the government to exact, when it creates a commission and clothes it with important functions, that it shall define and specify the authority given it, so clearly that no doubt can reasonably arise in the mind of the public as to its extent."

The rule is stated somewhat differently in 2 Elliott on Railroads, sections 675 and 683, as follows:

"(675) Government control of railroads in many of the states is exercised through the instrumentality of officers generally called railroad commissioners. These officers, of course, derive all their powers from the statute which creates the commission, and a railroad commission is a tribunal possessing naked statutory powers."

"(683) In ascertaining the jurisdiction of such a tribunal the statute creating it must always, it is obvious, be consulted, since the only juris-

diction it possesses is such as the statute confers. We suppose that the ordinary rules which govern *quasi* judicial tribunals created by statute and invested with naked statutory powers, govern boards of railroad commissioners, and that nothing can be intended to be within their jurisdiction which is not placed there by statute. It is not necessary, as we believe, that the statute should expressly and explicitly define the jurisdiction of the commissioners, but it is sufficient if jurisdiction is conferred in general terms. If jurisdiction over a general subject is conferred then authority over branches and details of that subject is conferred by necessary implication."

Conceding the quotation from Elliott to be a correct statement of the law, the question then is: does the statute creating this commission, or do any of the acts passed subsequent thereto, expressly or by necessary implication confer power or jurisdiction on this commission to enter the order asked for by the petitioner?

The act creating the commission was passed in 1871. Its title is "An act to establish a board of railroad and warehouse commissioners, and prescribe their powers and duties." It is not claimed by counsel for petitioner that this act expressly confers upon the commission the power we are asked to exercise or the jurisdiction we are asked to assume, but it is contended that section 11½ of the act confers that power and jurisdiction by implication. This section was added to the original act in 1887, and is in part as follows:

"* * * Whenever it shall come to the knowledge of said board, by complaint or otherwise, that any railroad bridge or trestle, or any portion of the track of any railroad in the State is out of repair, or is in an unsafe condition, it shall be the duty of such board to investigate, or cause an investigation to be made, of the condition of such railroad bridge, trestle or track and may employ such person or persons who may be civil engineers or engineers, as they shall deem necessary for the purpose of making such investigation, and whenever in the judgment of said board, after such investigation, it shall become necessary to rebuild such bridge, track or trestle, or repair the same, the said board shall give notice and information in writing to the corporation of the improvements and changes which they deem to be proper. And shall recommend to the corporation or person or persons owning or operating such railroad that it, or he, or they make such repairs, changes or improvements, or rebuild such bridge, or bridges, on such railroad as the board shall deem necessary, to the safety of persons being transported thereon. * * * And said board shall, after having given said corporation or person or persons operating such railroad an opportunity for a full hearing thereon, if such corporation or person shall not satisfy said board that no action is required to be taken by it or them, fix a time within which such changes or repairs shall be made, or such bridges, tracks or trestles shall be rebuilt, which time the board may extend. * * *

All railroads are required by the provisions of this section to comply with such recommendations of the board as are just and reasonable, and provision is made for the enforcement of such recommendations by mandamus.

It is claimed, that inasmuch as this section of the statute gives power to the board, in case "any portion of the track of any railroad in this State * * * is in an unsafe condition," to compel such track to be rebuilt or such necessary changes or improvements to be made as shall be deemed necessary "to the safety of persons being transported thereon," that therefore, if it is made to appear in this case that the track is unsafe because of the fact that the several railroads cross at grade, the commission may enter an order compelling the separation of grades.

We are unable to concur in this construction of the statute. This section was evidently added, by the Legislature, to the original act creating the commission, in order that the commission might have power, in case any railroad bridge, trestle or track was found to be out of repair or in an unsafe condition, to compel such company to repair or rebuild such bridge, trestle or track or to improve or change the same so as to make travel over the road reasonably safe. The Legislature evidently did not have in mind, when this act was passed, the dangers arising from grade crossings, but only such dangers as might arise from permitting the rails, ties or roadbed to become out of repair. Railroad crossings are not mentioned in this section, nor indeed are they mentioned in the act which it amends. Had it been the intention of the Legislature to confer power on this commission to compel the separation of grades how easy it would have been to have said so.

Again, if the construction placed upon this section by counsel for petitioner is correct, viz: that it gives to this commission power to compel the separation of grades, not because any bridge, track or trestle is, in and of itself, out of repair or in an unsafe condition, but because such track crosses or is crossed by the track of another railroad company at grade and is therefore unsafe, then *a priori* the commission is given the power to compel the protection of such crossing by interlocking device or otherwise. If, under this section, we have the power to separate the grades in order to remove an unsafe condition, we certainly have the power to compel the railroads interested, to interlock the crossing in lieu of a separation of grades, if, in the opinion of the commission such precaution would render the crossing reasonably safe.

So far as we are advised, it has never been claimed by any one that the power of this commission to compel the interlocking of existing crossings was derived from the section under consideration. Such power was never exercised by this commission until after the passage of an act in 1891, entitled, "An act to protect persons and property from danger at the crossings and junctions of railroads by providing a method to compel the protection of the same." And in all cases which have come before the commission its action was based upon the provisions of the last mentioned act.

If this commission was granted the power to separate grades or require interlocking plants to be constructed, by the section under consideration, what necessity was there for the passage of the crossings acts of 1889 and 1891? The mere fact of the passage of these acts, giving the commission power to compel interlocking or the separation of grades where a new crossing is about to be constructed, and the protection of crossings already

constructed, by interlocking devices, seems to us to be conclusive of the fact that this power was not intended to be conferred by the amendment to the act of 1871.

That the dangers incident to the operation of trains over the crossings in question, are very great, can not be denied. That some plan should be devised to minimize these dangers is plainly apparent.

In case of a failure on the part of the interested parties to agree upon a plan which will afford protection to life and property at this crossing, the power to compel such an arrangement, might very properly be lodged with this commission or some other proper authority, but, being of the opinion that under the law, as it now stands, we have no power to grant the relief prayed for, the motion to dismiss will be sustained.

Dated this 6th day of August, 1907.

W. H. BOYS, *Chairman;*

B. A. ECKHART, *Commissioner;*

J. A. WILLOUGHBY, *Commissioner.*

CAIRO & THEBES RAILROAD COMPANY

v.

SOUTHERN ILLINOIS & MISSOURI BRIDGE Co.

ILLINOIS CENTRAL RAILROAD Co.

ST. LOUIS SOUTHWESTERN RAILROAD Co.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY Co.

CHICAGO & EASTERN ILLINOIS RAILROAD Co.

Appearances—J. M. Hamill and William S. Dewey, for petitioner; John G. Drennan, E. H. Seneff, S. H. West, W. H. Miller, M. L. Clardy and Foreman & Whitnel, for respondents; Walter Warder, for Cairo Commercial Club.

The petition in this case was filed by the Cairo and Thebes Railroad Company, a corporation organized under the general railroad laws of this State, with authority to construct, maintain and operate a railroad from the city of Cairo to the village of Thebes, both of which are located in Alexander county. The Southern Illinois and Missouri Bridge Company is a corporation organized under the general incorporation laws of this State for the purpose of building a bridge across the Mississippi river from a point in Alexander county to a point opposite thereto in the State of Missouri. The respondent railroad companies are tenants of the Southern Illinois and Missouri Bridge Company, and its bridge and the approaches thereto on both sides of the river are used as a part of their respective lines of railroad. The prayer of the petitioner is that it may be permitted "to intersect, join and unite at grade its tracks with the tracks of the Southern Illinois and Missouri Bridge Company" at a point particularly described in the petition.

A preliminary question is raised in the case by a motion made by the respondents to dismiss the petition for want of jurisdiction in this commission.

It appears that the bridge company was organized under the general incorporation laws of this State, section 1 of which is as follows:

"That corporations may be formed in the manner provided by this act for any lawful purpose except banking, insurance, real estate brokerage, the operation of railroads and the business of loaning money: *Provided*, that horse and dummy railroads and organizations for the purchase and sale of real estate for burial purposes only may be organized and conducted under the provisions of this Act: *And, provided, further*, that corporations formed for the purpose of constructing railroad bridges shall not be held to be railroad corporations."

It is insisted that this commission is purely a creature of the statute and possesses no power except what the statutes expressly confers, and that while it is expressly given jurisdiction where one railroad company desires to cross (or intersect) with its track or tracks the main track of another railroad company, still, that inasmuch as the bridge company is not a railroad company, its motion to dismiss for want of jurisdiction should be sustained.

Section 19 of the general railroad law provides:

"Every corporation formed under this act shall, in addition to the powers hereinbefore conferred, have power * * *

"Sixth—To cross, intersect, join and unite its railways with any other railway before constructed, at any point in its route, and upon the grounds of such other railway company. * * *"

Section 9 of the act of Congress authorizing the construction of this bridge across the Mississippi river is as follows:

"That all railroad companies desiring the use of any bridge constructed under this act shall have, and be entitled to, equal rights and privileges relative to the passage of railway trains and cars over the same and over the approaches thereto, upon payment of a reasonable compensation for such use. * * *"

Under these provisions there can be no doubt as to the right or power of the petitioner to connect its tracks with the tracks of the bridge company, nor is there any doubt as to the duty of the bridge company to permit such connection. Indeed, the bridge company makes no objection to a connection, but does object to the particular connection selected by the petitioner. Because of its inability to agree with respondents upon the place of connection, the petitioner filed this petition on the theory that by virtue of the authority conferred by an act entitled, "An act in relation to the crossing of one railroad by another, and to prevent danger to life and property from grade crossings," this commission had the power to prescribe the place where and the manner in which the connection should be made.

Section 1 of the act last referred to, as it stood at the time of filing the petition, was as follows:

"That hereafter any railroad company desiring to cross with its tracks the main line of another railroad company, shall construct the crossing

at such place and in such manner as will not unnecessarily impede or endanger the travel or transportation upon the railway so crossed. If in any case objection be made to the place or mode of crossing proposed by the company desiring the same, either party may apply to the Board of Railroad and Warehouse Commissioners, and it shall be their duty to view the ground and give all parties interested an opportunity to be heard. After full investigation, and with due regard to safety of life and property, said board shall give a decision prescribing the place where and the manner in which such crossing shall be made. * * *

By a subsequent section of the statute it is provided that every junction of two or more railroad tracks shall be taken and deemed to be a crossing; and, consequently, if, under the facts in this case, the commission would have jurisdiction had the petitioner asked for a crossing instead of a connection, then it necessarily follows, we think, that it has jurisdiction in this case.

The question then is, whether or not the Legislature intended by the use of the words "railroad company," in the last section quoted, to limit the power of this commission to cases where one railroad corporation, actively engaged in the business for which it was organized, desired to cross or intersect with its tracks the tracks of another corporation similarly organized and engaged.

In the case of *Chicago Dock Company v. Garrity et al.*, 115 Ill., 155, the court had under consideration the ninetieth clause of section 1 of article 5 of the City and Village Act, which declares:

"The city council or board of trustees shall have no power to grant the use of, or the right to lay down, any railroad tracks in any street of the city to any steam or horse railroad company, except on a petition of the owners of the land representing more than one-half of the frontage of the street. * * *

The court said:

"It is very clear that 'natural persons' are here within the intention, although not within the letter, of the act, for the injury against which protection is intended to be afforded is the laying of railroad tracks in the streets. By whom the tracks shall be laid and the cars thereon operated is, manifestly, of no consequence whatever. The same results, in all respects, will follow the laying of railroad tracks in the streets and operating cars thereon by individuals as will follow the laying of them by corporations. The use of the word 'company,' we have no doubt, was simply because such tracks are almost always laid and operated by companies. The clause should be read as including both corporations and individuals."

If the words "railroad company" include "natural persons," why may they not include a bridge company, which is expressly authorized by its charter to construct, maintain and own railroad tracks?

The object the Legislature had in view in passing the act in question was, among other things, "to prevent danger to life and property," and no one will contend that the tracks of the bridge company are less dangerous because the corporation which owns them is organized under the General Incorporation Act, instead of under the Railroad Act.

The case above referred to was approved and followed in *McCann v. The People ex rel.*, 194 Ill., 526..

In the case of *Village of London Mills v. White*, 208 Ill., 289, the act relating to telegraph companies, section 4 of which provides, "No such company shall have the right," etc., was under consideration. The court said:

"Appellants contend that the act of which section 4, *supra*, is a part applies only to corporations. In so far as the act confers the power of eminent domain, this is true; but in so far as it prescribes the method for obtaining the consent of corporate authorities to the erection of poles and the stringing of wires, it must be held applicable both to corporations and natural persons. Following the reasoning of this court, in *Chicago Dock Company v. Garrity*, 115 Ill., 155, 'the clause should read as including both corporations and individuals.'"

Our predecessors had occasion to consider this question in the case of *C., M. & St. P. Ry. Co. v. Goddards et al.*, 2 Opinions of Commission, 16, and there said:

"It may be insisted that the respondents are not a railroad company within the meaning of the statute, for the reason that the franchise is granted to Alpheus P. Goddard and Alpheus J. Goddard, as individuals. But, in view of the fact that they are to operate their road in connection with the General Electric Company a railroad operated by a corporation, and that their said road is to be a part of that system, and in view of the further fact that the statute, section one, provides that hereafter any railroad company (not a corporation) desiring to cross the main track of another railroad company shall construct its crossings in such a manner as not to unnecessarily impede or endanger the travel of said road, we are of the opinion, and so hold, that for the purpose of this act, that any person, company or corporation desiring to cross another railroad track with a railroad track, must cross it at such place and in such a way that it will not unnecessarily impede or endanger the travel of the railroad company so crossed; and that it will not unnecessarily endanger the lives or property of the public, regardless of whether it is a railroad corporation or an individual, the law applying to the railroad itself, and not to the owners or operators."

While we agree with the conclusion of our predecessors on this question and believe that the construction placed by them upon the section in question is the correct one, nevertheless we think there are facts in this case which completely and without any question justify our action in overruling the respondents' motion.

By its charter from the State of Illinois and the Act of Congress, the bridge company was authorized to construct a bridge across the Mississippi river and the necessary approaches thereto in order to provide for the passage of railway trains and cars.

In the construction of its bridge it found it necessary to build about two miles of double track railroad on the east and a like amount on the west side of the river, and now owns and controls four miles of double track railroad exclusive of the tracks on the bridge proper.

Under certain contracts or leases, no less than four or five railroad companies, operating in the aggregate a very large number of trains, use these tracks and this bridge as a part of their respective railroads.

The bridge company owns neither engines nor cars, and its railroad tracks are in truth and in fact used exclusively and operated by its railroad tenants. Therefore, the tracks which the petitioner seeks to connect with are by reason of such leases or contracts the tracks of "another railroad company" or companies, and are therefore not only within the spirit of the act conferring jurisdiction on this commission, but are within its literal terms.

One other reason is suggested why respondents' motion to dismiss should be sustained. It is insisted that if the bridge company is held to be a "railroad company," that then it is a railroad company engaged exclusively in interstate commerce, and that section 1 of the Hepburn act gives to the Interstate Commerce Commission exclusive jurisdiction to determine the mode, place and manner of making connections with interstate roads by lateral or branch lines of railroads. We have carefully examined the act in question and are of opinion that it in no way limits the power of this commission to pass upon the question presented by the petition filed in this case.

For the reasons above stated, the motion of the respondents to dismiss the petition for want of jurisdiction is denied.

The property of the bridge company consists of a double track steel railroad bridge, one-half mile or more in length. At the east end of the bridge proper is a concrete viaduct about 325 feet in length and approximately eighty-five feet above the level of the ground. At the east end this viaduct connects with an embankment, which at the point of connection is forty or fifty feet above the level of the ground. This embankment extends for a considerable distance east of this connection. The bridge company have and maintain over this bridge, viaduct and embankment a double track railroad. The point of connection selected by the petitioners is 360 feet east of the east end of the concrete viaduct. The respondents object to the connection being made at this point and suggest a point about 4,000 feet east of the east end of the bridge. It seems to be conceded by all parties that the point of connection should be protected by an interlocker, regardless of whether it is made at the place selected by the petitioner or the one suggested by the respondents.

The only question in the case on which there seems to be a difference of opinion is as to the proper place to make the connection.

If the connection is made at the point selected by the petitioner, the west derails on the bridge company's tracks must be placed about 120 feet out on the concrete viaduct, if the rule of the commission requiring it to be placed at least 500 feet from the fouling point is observed.

A large number of expert witnesses were examined by both petitioner and respondents. Without reviewing the evidence in detail, it is sufficient to say that the witnesses examined by the petitioner expressed the opinion that the point of connection near the end of the bridge could be properly and adequately protected by an interlocker and could be made equally as safe as the one suggested by respondents. On the other hand,

the witnesses examined by respondents were all of the opinion that the connection at the end of the bridge could not be properly protected by an interlocker; that if a train should be derailed on the concrete viaduct the consequences would be much more serious than they would be if such derailment occurred at a point off of the bridge and where the ground was comparatively level and therefore that the proper place for the connection was at the point suggested by the respondents.

That the connection near the bridge is much more desirable from the petitioner's standpoint must be conceded. The point selected by the bridge company would lengthen petitioner's line about 1,300 or 1,400 feet and consequently increase the expense. Its approach to the connection at the end of the bridge is on a tangent, while its approach to the connection suggested by the bridge company is on a curve. The grade of its tracks approaching the connection at the end of the bridge would be three-tenths of one per cent, thus agreeing with the maximum grade on its entire line, while the grade on the bridge company's track from the point of connection suggested by respondents to the east end of the concrete viaduct is five-tenths of one per cent.

If we were permitted to view the question from the petitioner's standpoint alone, we would have no hesitancy in saying that the proper place to make the connection is the one it has selected.

The statute, however, requires that the connection be made "at such point and in such manner as will not unnecessarily impede or endanger the travel or transportation upon the railway so crossed," and it is therefore our duty to view the situation from an impartial standpoint and prescribe a place and manner of connection as favorable to the petitioner as can be selected, but still one which will not unnecessarily impede or endanger travel or transportation on the bridge company's tracks.

From our view of the premises and the evidence offered at the hearing we are of the opinion that it would be a very dangerous thing to permit this connection to be made right at the mouth of the bridge. In the first place it would congest traffic at this point and thus make it much more difficult for the bridge company to lay additional tracks on the approach, to take care of increased business. Then, again, the evidence shows that there are from thirty to forty regular trains operated over the bridge daily at the present time and well founded reasons are suggested why a very material increase may reasonably be expected in the near future. It can hardly be claimed that the large amount of traffic now passing over this bridge should be seriously interfered with, in order that the petitioner with its twenty-five miles of main line may, with less expense and more conveniently transact its business.

But aside from other objections that have been urged, we are firmly convinced that to permit the connection at the place proposed by petitioner would "unnecessarily endanger the travel or transportation" over the bridge company's tracks. Believing this to be true, our duty is plain. We can not balance the additional expense and inconvenience to petitioner against the loss of life or limb.

It is therefore ordered and decided that petitioner, the Cairo and Thebes Railroad Company, have leave to intersect, join and unite at grade

its tracks with the tracks of the Southern Illinois and Missouri Bridge Company at a point about 4,000 feet northeast of the east end of the bridge across the Mississippi river at Thebes with another connection at a point about 1,500 feet northeast of the point last mentioned, both of which points are more particularly shown and described on a plat offered in evidence in this cause and marked "Defendant's Exhibit A," the right-of-way for such connections being first obtained as provided by law.

It is further ordered and decided that such connections be protected by a proper and adequate interlocking device to be installed and maintained by and at the expense of the Cairo and Thebes Railroad Company; that the Cairo and Thebes Railroad Company cause to be prepared and presented to this commission without unnecessary delay complete and detailed plans and specifications of the interlocking plant proposed to be installed for the approval of this commission. This cause will be taken under advisement and a final order entered upon presentation of plans and specifications for such interlocking plant and the approval of the same, at which time the division of the expense of the operation of such plant will be determined by the commission, unless the parties in interest shall have agreed upon such division.

Dated this 17th day of October, A. D. 1907.

W. H. BOYS, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

PEORIA, LINCOLN & SPRINGFIELD TRACTION CO.

V.

CHICAGO & ALTON RAILROAD CO.

On the 8th day of August, A. D. 1907, an order was entered in this cause authorizing the petitioner to cross with its proposed line of railway by means of an overhead crossing the railway of the respondent company at the point mentioned in the petition filed herein.

The only question to be determined at this time is whether or not the respondent company shall be required to pay any part of the cost of separating the grades at this point, and if so, the proportion it shall be required to bear.

We have carefully considered the suggestions of counsel concerning the division of expense of separating the grades at this point and have arrived at the conclusion that in all ordinary cases it is only fair and equitable that the senior road should bear one-third of such expense.

It is therefore ordered and decided that the expense of the separation of grades at the proposed crossing shall be borne and paid by the railroads interested in the following proportion, to-wit:

The petitioner shall pay two-thirds of the expense of separating said grades and the respondent shall pay one-third of such expense.

Dated this 3d day of December, A. D. 1907.

W. H. BOYS, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

KENSINGTON & EASTERN RAILROAD COMPANY

v.

PITTSBURG, FT. WAYNE & CHICAGO RY.,

CHICAGO & STATE LINE RY. CO.,

THE NEW YORK, CHICAGO & ST. LOUIS R. R. CO.,

SOUTH CHICAGO & SOUTHERN R. R. CO.,

PENNSYLVANIA COMPANY,

CHICAGO & WESTERN INDIANA R. R. CO.,

CHICAGO & ERIE R. R. CO.,

ERIE R. R. CO.,

CHICAGO, INDIANAPOLIS & LOUISVILLE R. R. CO.,

THE WABASH RAILROAD COMPANY

AND

ELGIN, JOLIET AND EASTERN RY. CO.

Appearances—John G. Drennan, for petitioner; Wm. J. Henley, Wells H. Blodgett, Geo. W. Kretzinger, Robert J. Cary, W. O. Johnson, Loesch, Scofield & Loesch, for respondent.

The amended petition in this case was filed Aug. 6, 1907, by the Kensington and Eastern Railroad Company against the Pittsburg, Ft. Wayne & Chicago Railway Company, Chicago & State Line Railway Company, The New York, Chicago & St. Louis Railroad Company, South Chicago & Southern Railroad Company, Pennsylvania Company, Chicago & Western Indiana Railroad Company, Chicago & Erie Railroad Company, Erie Railroad Company, Chicago, Indianapolis and Louisville Railroad Company, the Wabash Railroad Company and the Elgin, Joliet and Eastern Railway Company. Answers were filed by the several respondents prior to the 5th day of September, 1907, at which time the cause was heard by the commission, the place of the proposed crossing having been viewed by the commission on Aug. 28, 1907.

The Kensington and Eastern Railroad Company is a corporation duly organized under the general laws of the State of Illinois relating to the incorporation of railroads, and has laid out and located its road from Kensington, Cook county, Illinois, a station on the line of the Illinois Central Railroad Company, in a southeasterly direction to the Indiana state line, near the city of Hammond, Indiana. At or near Burnham, Illinois, the proposed railroad of petitioner, as the same is laid out will cross the main line of the Chicago and Western Indiana R. R. Co., the main line of the New York, Chicago and St. Louis R. R. Co., and the main line of the South Chicago and Southern R. R. Co. At the point of proposed crossing the Chicago & Western Indiana R. R. Co. owns and operates a double track railroad running in a northwesterly and southeasterly direction, and the New York, Chicago & St. Louis R. R. Co. owns and operates a double track railroad, which parallels the Chicago & Western Indiana Company's tracks. At this point the four main tracks last above mentioned are crossed by the single track main line of the South Chicago and Southern Railroad Company running in a northerly and southerly direction, which crossing is now protected by an interlocker.

The petitioner proposes to cross the main tracks of these railroads, with a double track main line, at grade, at the point where the three roads named, intersect.

All of the other respondents, (except the Pittsburg, Ft. Wayne and Chicago Railway Company, which disclaims any interest in any of the tracks to be crossed), are either tenants of or are otherwise interested in some one of the three respondents above mentioned.

It is insisted by the respondents, that to permit a grade crossing at the point selected by the petitioner will "unnecessarily impede or endanger the travel or transportation upon" the railways so to be crossed, and therefore, if a crossing is permitted at that point, or at any other point designated by the commission, that the petitioner should be required to construct an overhead crossing.

The evidence submitted at the hearing shows that one of the two tracks which the petitioner proposes to construct, is to be used by the Chicago, Lake Shore and South Bend Railway Company, an electric line that is to be operated between South Bend, Indiana, and Chicago. The other track is to be used by the petitioner and also by the C., C. & L. R. R. Co., and operated as a steam railroad.

It further appears from the evidence that from July 7, 1907, to July 15, 1907, both inclusive, the petitioner took observations of the number of trains that actually passed over the place of the proposed crossing each 24 hours, the average number per day being 151. The petitioner also estimates that when its road is completed and in operation, it and its tenants will operate an average of 51 trains over the crossing, making a total of 202 train movements over the proposed crossing each day.

The first question to be determined is whether or not the petitioner should be permitted to construct a grade crossing at the point selected by it.

We have had occasion in a number of cases recently decided to express our views on the subject of grade crossings and it is hardly necessary to here repeat what we have heretofore said on this subject. All are agreed that there is an element of danger in grade crossings which it is impossible to entirely overcome.

From the evidence it appears that no less than five or six trunk lines enter the city of Chicago over the tracks of the Chicago & Western Indiana Company. A very large number of passenger trains are operated by these trunk lines. Of the 51 trains, (including electric cars or trains), which the petitioner proposes to operate over this crossing, 43 will carry passengers.

With these facts before us we have no hesitancy in saying that the petitioner's request for a grade crossing should be denied.

The next question to be determined is whether or not the petitioner should be permitted to construct an overhead crossing at the point selected by it. As before stated, the South Chicago road now crosses the Western Indiana and Nickle Plate roads at this point, and if the petitioner is allowed to construct an overhead crossing over the three roads named, it will be next to impossible to separate the grades of the South Chicago road and the Western Indiana and Nickel Plate roads at any time in the future.

It was suggested by several of the engineers who were examined as witnesses, that the difficulties involved would be obviated by requiring the petitioner to cross by an overhead crossing, the tracks of the Chicago & Western Indiana Company and the New York, Chicago and St. Louis Company, at a point 6,400 feet northwest of the point selected by it, and to cross the single track main line of the South Chicago and Southern Railroad Company at grade, at or near the point where this track is now crossed at grade by the Chicago & Western Indiana and New York, Chicago & St. Louis Companies.

It seems to us that this arrangement has a number of advantages over any other plan that has been suggested.

In the first place, the trains operated by the South Chicago and Southern are comparatively few in number, averaging but 16 per day, and consequently the same objection does not exist to crossing this road at grade that does to crossing the Chicago & Western Indiana and the New York, Chicago and St. Louis. Again, the present grade crossing is protected by an interlocker and such interlocking plant, could, with very little expense, be extended so as to include the crossing of petitioner's tracks. This arrangement would make it entirely practicable and feasible, should the increase of traffic on the several lines require it, to separate the grade of the track of the South Chicago and Southern from the grade of the tracks of the Chicago & Western Indiana, the New York, Chicago & St. Louis and the Kensington & Eastern.

The most serious objection to this plan of crossing, is the increased expense to the Kensington and Eastern, by reason of the fact that the right-of-way along the north side of the Western Indiana and Nickel Plate tracks from the point 6,400 feet northwest of Burnham to the

South Chicago and Southern crossing would probably cost more money than a right-of-way along the south side of those tracks between the points named.

There is no doubt that the expense of this crossing to the Kensington & Eastern Company will be very large, but whether or not the expense of constructing the crossing in the manner above indicated, would exceed the expense of an overhead crossing at the point selected by the petitioner, we are unable to determine from the estimates of the engineers, offered in evidence. At any rate, all of the circumstances considered, we are of the opinion that the plan last suggested is the proper one, and should be adopted.

One additional question remains to be determined. Section 2, of an act entitled, "An act in relation to the crossing of one railway by another and to prevent danger to life and property from grade crossings," is, in part, as follows:

"If a separation of grades is required at such crossing, then such commission shall decide and include in the order authorizing such crossing, the proportion of the expense thereof to be paid by the railroads interested in said crossing, respectively, but not more than one-third of such expense shall be charged against the senior road."

The question is, what proportion of the expense of separating the grade of petitioners' tracks from the grade of the tracks of the Chicago & Western Indiana and the New York, Chicago & St. Louis Companies should equitably be borne by the two last named roads?

There can be no question as to the right of petitioner to cross with its tracks, the tracks of the Chicago & Western Indiana and New York, Chicago & St. Louis Companies. The statute under which it was organized expressly confers upon it this right. The benefits that will accrue to the senior roads, by reason of this crossing being made by an overhead structure rather than at grade, are many, and must be apparent to everyone. There will be no possibility of a collision between trains of the different companies, and therefore the liability to damages on account of injuries to persons and property is obviated. None of the troublesome delays incident to a grade crossing will be encountered, and the continuing expense of the operation of an interlocking plant, a portion of which the senior road is usually required to pay, will be avoided.

All things considered, we are inclined to agree with the suggestion of counsel for petitioner, that the senior roads should be required to pay one-third of the expense of separating the grades in question.

It is therefore ordered and decided that the petitioner, the Kensington and Eastern Railroad Company be, and it is hereby authorized to cross with its tracks the main tracks of the Chicago and Western Indiana Railroad Company and the main tracks of the New York, Chicago and St. Louis Railroad Company (the right-of-way for such crossing being first obtained in the manner required by law) at a point about 6,400 feet northwest of the proposed point of crossing as described in the petition filed herein; that such crossing shall be made by a substantial overhead structure, the lowest part of which shall be twenty-two (22) feet above the top of the rails of the Chicago and Western Indiana Railroad and

the New York, Chicago and St. Louis Railroad, and that the expense of separating the grades at said crossing shall be paid by the railroads interested, in the following proportions: Two-thirds of such expense shall be paid by the petitioner, the Kensington and Eastern Railroad Company, and one-third of such expense shall be paid by the Chicago and Western Indiana Railroad Company and the New York, Chicago and St. Louis Railroad Company.

It is further ordered and decided that the petitioner, the Kensington and Eastern Railroad Company be and it is hereby authorized to cross with its tracks the main track of the South Chicago and Southern Railroad Company at grade, at a point immediately north and west of the point where such track is now crossed by the tracks of the Chicago and Western Indiana Railroad Company at Burnham, Cook county, Illinois, the right-of-way for such crossing being first obtained as provided by law; that such crossing be constructed at the sole expense of the petitioner and be protected by a proper and adequate interlocking device to be installed and maintained at the expense of the Kensington and Eastern Railroad Company. Permission is granted the parties in interest to enlarge and extend the present interlocking plant located at said crossing so as to include the tracks of the petitioner, should they so desire, in which event the petitioner is directed to prepare and present to this commission without unnecessary delay, complete and detailed plans and specifications of the additions to such interlocking plant, for the approval of this commission, and in case the parties fail to agree upon a division of the expense of operating such interlocking plant at said crossing such question will be determined by the commission upon the presentation of such plans and specifications for approval. This cause will be taken under advisement and a final order entered, upon presentation of plans and specifications for such interlocking plant and the approval of the same.

Dated this 30th day of October, A. D. 1907.

W. H. BOYS, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

CHICAGO, WILMINGTON AND VERMILION COAL COMPANY

V.

ST. LOUIS & SPRINGFIELD RAILWAY COMPANY.

To cross at grade near county line of Sangamon and Macoupin counties.

It appears from the petition filed in this case that the petitioner is about to construct a switch track from its coal mine located in or near the village of Thayer, to a point of connection with the Chicago, Burlington & Quincy Railroad Company, some two or three miles distant, and in so doing it will be necessary to cross the main line of respondent's road. It further appears that petitioner's switch track is to be used only

for the purpose of switching coal from petitioner's mine to the C., B. & Q. R. R., and that so far as it is concerned, the movements over the proposed crossing will probably not exceed an average of four per day.

It further appears that on the 12th day of September, A. D. 1907, petitioner and respondent entered into a certain contract relative to the proposed crossing, wherein it is agreed among other things, that the petitioner may cross with its proposed switch track, the main track of respondent, at grade, at a point particularly described therein, and that petitioner shall install and maintain at said crossing a certain interlocking device therein described.

And it appearing to the commission that a grade crossing at the point mentioned, if properly interlocked, as provided in said contract, will provide adequate protection to life and property.

It is therefore ordered and decided that petitioner be and it is hereby granted the right to cross with its proposed switch track the main track of the respondent at grade, at the point particularly described in the contract above referred to, a copy of which is hereto attached and made a part of this order.

It is further ordered and decided that petitioner shall at its own expense install and maintain at said crossing an interlocking device, substantially as is provided for in said contract, and it is further ordered and decided that the said contract hereinbefore referred to be and the same is hereby approved.

Dated this 22d day of October, A. D. 1907.

W. H. BOYS, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

JOLIET AND SOUTHERN TRACTION COMPANY

V.

THE CHICAGO AND ALTON RAILROAD COMPANY,

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY,

THE CHICAGO, LAKE SHORE AND EASTERN RAILWAY COMPANY

AND

THE ELGIN, JOLIET AND EASTERN RAILWAY COMPANY.

Appearances—For petitioner, J. K. Newhall, John M. Raymond; for Chicago & Alton Railroad Company, James Miles; for Chicago, Lake Shore and Eastern R. R. Co., and Elgin, Joliet and Eastern Ry. Co., R. W. Campbell.

The petitioner in this case is a railroad corporation organized under the laws of the State of Illinois relating to the incorporation of railroad companies, and is authorized by its charter to construct and operate a

railroad from the city of Joliet, in Will county, in a southwesterly direction through the counties of Grundy, Will and Livingston to the city of Dwight, in Livingston county. The road is to be operated by electricity.

On the 23d day of April, A. D. 1906, the city council of the city of Joliet duly passed its ordinance number 2233 authorizing the petitioner to construct, maintain and operate its railroad on and over certain streets in the city of Joliet and particularly on and over Jackson st. in said city, from the intersection of such street with Chicago st., easterly to the eastern corporate limits of the city. In constructing its line on Jackson st. it will be necessary for the petitioner to cross the tracks of all of the respondents.

The Chicago and Alton Railroad Company's tracks enter the city of Joliet at a point on the southern city limits, and run thence directly north through the city. The tracks of the Atchison, Topeka and Santa Fé Railway Company are adjacent to and parallel with the tracks of the Chicago and Alton Railroad Company. North of Jefferson st. the tracks of the Chicago, Lake Shore and Eastern Railway Company and the Elgin, Joliet and Eastern Railway Company run north parallel with the tracks of the Chicago and Alton Railroad Company and the Atchison, Topeka and Santa Fé Railway Company, to a point north of Jackson st.

On the 23d day of January, A. D. 1906, the city council of the city of Joliet passed an ordinance requiring all of the respondents to elevate their tracks through certain portions of the city, and this ordinance and the provisions thereof, were duly accepted by the respondents. By the provisions of this ordinance the track elevation commences on the south line of Ohio st. and with a gradually ascending grade of five-tenths of one per cent crosses Jackson, Benton, Webster, Cass, Clinton, Van Buren and Jefferson sts. At Jackson st. the elevation will be about four feet above the present grade of the street. Benton and Webster sts. are, by the provisions of the ordinance, vacated at the point where they are crossed by the track elevation. A subway is provided for at Cass and at Clinton sts. Van Buren st. is vacated and a subway is provided for at Jefferson st. South of Jefferson st. three subways are provided for.

The railroad tracks of respondents are laid through the center of the city, that is to say, the population east of the tracks is about equal to that west of the tracks. Aside from these six subways so provided for by the ordinance, all other intervening streets, or the portion thereof which will be occupied by the embankments, are vacated. Street railway tracks are now laid and being used on all of the streets where subways are provided, except on Clinton st., and this street is used very extensively by wagons and other vehicles, and because of the fact that this is the only street where a subway is provided which is not occupied by street railway tracks, the officials of the city of Joliet and the people owning frontage on the street, decline to give their consent to petitioner to construct and operate its line on this street.

The petitioner's line enters the city of Joliet from the northwest and runs thence in a southerly direction to Jackson st., and thence east on Jackson st. to the city limits and to require it to cross the tracks of the respondents at any point south of Jackson st. would have the effect of

lengthening its line, which it desires, of course, to avoid. The Atchison, Topeka and Santa Fé Railway Company has at the present time four tracks crossing Jackson st.

Immediately east of these tracks the Chicago and Alton Railroad Company have six tracks crossing Jackson st. Immediately east of and adjoining the tracks of the Chicago and Alton Railroad Company, are two tracks owned by the Chicago, Lake Shore and Eastern Railroad Company and one track owned by the Elgin, Joliet and Eastern Railway Company, making a total of thirteen tracks.

After the passage of the track elevation ordinance referred to, the city council of the city of Joliet passed another ordinance authorizing the Atchison, Topeka and Santa Fé Railway Company to elevate its two main tracks over Jackson st. and required it to construct a subway under such tracks. The elevation of these tracks has been completed and a subway constructed, the entrance to said subway from the east on Jackson st. being about seventy feet west of the west track owned by said company, and which is at grade.

Under these conditions it is the contention of the petitioner that it is impossible for it to construct an overhead crossing because the two tracks which have been elevated by the Atchison, Topeka and Santa Fé Railway Company would interfere with such a plan. The evidence in the case shows that if the petitioner is required to construct a subway at this point that such subway can not be naturally drained because the bottom of the same would be below any and all of the sewers which have been constructed in that part of the city, and that therefore such subway would have to be drained by artificial means, which is not only quite expensive, but is very unsatisfactory.

We are thoroughly satisfied that the petitioner has been very diligent in attempting to avoid a grade crossing at the point mentioned, and perhaps because of this fact the city council of the city of Joliet, on Aug. 26, 1907, duly passed a resolution, which is as follows:

"Be it Resolved by the City Council of Joliet, Illinois: That the plans for the crossing of the railroad tracks on the Chicago and Alton Railroad, the Atchison, Topeka and Santa Fé Railroad, the Chicago, Lake Shore and Eastern Railway and the Elgin, Joliet and Eastern Railway on Jackson st., near Michigan st., as submitted by the Joliet and Southern Traction Company, be and the same are hereby authorized to cross at grade the present surface tracks of said railroads, and that said work shall be done subject to the approval of the committee on streets and alleys and the city engineer."

In view of the difficulties in the way of the petitioner crossing the tracks of the respondents, its evident good faith in the matter, and the attitude of the officials of the city of Joliet, we would be very loath to refuse a grade crossing to the petitioner, unless to grant such permission could be construed as an act of gross, if not criminal negligence on the part of the commission.

The evidence in this case shows that the Chicago and Alton Railroad Company have about eighty-two (82) train movements per day across Jackson st.; that the Chicago, Lake Shore and Eastern Railway Com-

pany have about ten (10) movements per day and the Elgin, Joliet and Eastern Railway Company the same number. The Atchison, Topeka and Santa Fé Railway Company was not represented at the hearing and no evidence was introduced showing the number of trains operated by it, but inasmuch as this is its main line on which it operates practically as many trains as the Chicago and Alton Railroad Company, we are perhaps safe in saying that it has at least fifty (50) train movements over this crossing per day. The evidence also shows that the petitioner will operate a car over this crossing every ten minutes, and if cars are operated from 6:00 a. m. until 10:00 p. m. there would be approximately ninety (90) cars run over the crossing during each day, making the total number of movements approximately two hundred and fifty (250) per day. As we view it these facts alone furnish a sufficient reason for refusing permission to construct a grade crossing at this point, but there are other difficulties in the way. If a grade crossing was permitted cars approaching from the west would be entirely cut off from any view of trains on the respondents' lines by the elevated tracks of the Atchison, Topeka and Santa Fé Railway Company until they were within a very few feet of the crossing. The tracks of the respondents across this street when the track elevation is completed, will be laid upon a grade of five-tenths of one per cent and trains approaching the crossing from the north will probably be operated at a higher rate of speed, because of this grade, than would otherwise be necessary, while trains approaching the crossing from the south would be on a descending grade and consequently not under as perfect control as if the tracks were level. The evidence also shows that the Chicago and Alton Railroad Company and the Atchison, Topeka and Santa Fé Railway Company operate a large number of through passenger trains and that such trains are operated over this crossing at an average rate of speed of thirty miles per hour. All of these things combine to make the crossing a very dangerous one. We do not think counsel for the respondents exaggerate in the least when they say in their brief, "if a death trap were deliberately planned, human ingenuity would have trouble in contriving a worse one."

We are not unmindful of the fact that to permit petitioner to cross these tracks at Jefferson st. would better serve the convenience of that portion of the citizens of Joliet who will patronize the line, nor of the fact that to require the petitioner to construct a subway at this point will mean the expenditure of a considerable sum of money, but we are not willing to balance that expenditure against loss of life or limb.

In the evidence presented at the hearing we are unable to find a single fact that would justify us in entering an order in this case permitting the petitioner to cross at grade.

When a question of this character is presented to the commission its first and most important duty is to see to it that the lives of the traveling public and of the employes of the parties interested are properly protected.

In a case recently decided by the Supreme Court of Pennsylvania (*Pennsylvania Railroad Company v. Waterloo Street Railway Company*, 188 Pa. St., 79) the court said:

"What a century ago were deemed unsurmountable obstacles to an under or over crossing are now treated as only engineering difficulties, which skill and capital can generally overcome. * * * It is not as if the result of a collision were the injury to, or even the destruction of property, which compared with rapid and cheap travel and transit might perhaps be trivial but it is the dangers to the persons of the public which is to be avoided. Safety is the object in view, and therefore on determining what is reasonable we must not balance expense and difficulty against loss of life or limb."

In another case (*Chester Traction Company v. Railroad Company*, 188 Pa. St., 105) the court said:

"But one conclusion can reasonably be formed from these undisputed facts; a grade crossing is highly dangerous to the traveling public on both roads. All precautions taken to avoid danger serve only to lessen it. The millions of passengers on the two roads are at the risk of the few railroad servants who have charge of them; recklessness, negligence, inattention or dullness on the part of the servants will still endanger life and limb of the passengers.

"While we are writing this opinion the news of the Cohoes accident where the steam road was crossed at grade by the electric, has come to us. Every passenger in the electric car goes into one or the other of the two classes of sixteen killed and seventeen injured. The servants of each system attribute the accident to the negligence of those of the other.

"Increasing the number of crossings only increases the danger by increasing the chances for collisions."

On the question of the expense in separating grades the court in this same case said:

"But the financial inability of the company is not a test to determine whether an improvement to carry safely three millions of passengers is reasonable and practicable; otherwise the poorer the company the more unlimited its right to interfere with the exercise by the older company of its franchises and the more freely can it discharge the safety of the traveling public. * * * Grade crossings are not to be established to promote the mere convenience of the railroad seeking to cross. * * * Admit that a collision would cost one or the other of the companies, or both, a heavy sum. That would mean a loss of dividends to the company and a loss of life or limb to the traveling public; the risks are not equal and humanity shrinks from off-setting the one against the other."

Our views are in harmony with the views expressed by the court in these opinions.

It is therefore ordered that the petitioner, the Joliet and Southern Traction Company, be and it is hereby authorized to cross the tracks of the Chicago and Alton Railroad Company, the Atchison, Topeka and Santa Fé Railway Company, the Chicago, Lake Shore and Eastern Railway Company and the Elgin, Joliet and Eastern Railway Company on

Jackson st., in the city of Joliet, Will county, Illinois, by means of a subway, to be constructed by the petitioner under the several tracks of the railroad companies named.

It is further ordered and decided that the Chicago and Alton Railroad Company, the Atchison, Topeka and Santa Fé Railway Company, the Chicago, Lake Shore and Eastern Railway Company and the Elgin, Joliet and Eastern Railway Company shall, if practicable, at the same time such subway is constructed by the petitioner, elevate their several tracks across Jackson st. so as to conform to the grade provided for in the ordinance of the city of Joliet requiring the elevation of such tracks.

It is further ordered and decided that the cost of separating the grades at the point named shall be borne and paid by the railroad companies interested, in the following proportion, to-wit: Two-thirds of the expense of separating such grades shall be paid by the petitioner and one-third of the expense of separating such grades shall be paid by the respondents.

It is further ordered and decided that should the petitioner at any time before the construction of said subway find a more feasible and practicable place to effect such crossing, that then and in such case the same may be presented to this commission for its consideration by means of a supplemental petition.

Dated this 4th day of December, A. D. 1907.

W. H. BOYS, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

CHICAGO, OTTAWA & PEORIA RAILWAY COMPANY

v.

CHICAGO & ALTON RAILROAD COMPANY

CHICAGO, INDIANA & SOUTHERN RAILROAD COMPANY,

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

AND

WABASH RAILROAD COMPANY.

Appearances—For petitioner, Mr. George B. Gillespie; for C. & A. R. R. Co., Winston, Payne, Strawn & Shaw; for C., I. & S. R. R. Co., Glennon, Cary, Walker & Howe.

Two petitions were filed in this case, one asking permission to construct three grade crossings in Main st. in the city of Streator, and the other asking for three like crossings at certain points south of Main st. In order that the whole matter might be heard at one time the cases were consolidated and the hearing covered all points raised in both petitions.

The petitioner is organized under the general railroad laws of this State and is engaged in the construction of an electric interurban rail-

road through the city of Streator, Ill. In the petitions filed the petitioner asks permission to construct two grade crossings over the Chicago & Alton Railroad, one on Main st. and one in block eighty-one (81), south of Main st., two over the Chicago, Indiana & Southern Railroad, one on Main st. and one in block eighty-one, south of Main st., one over the Wabash Railroad at a point south of Lundy st., and one over the Chicago, Burlington & Quincy Railroad on Main st.

Main st. is the principal business street in the city of Streator and runs east and west. In the eastern portion of the city Main st. is crossed by the Atchison, Topeka and Santa Fé Railroad, which has a general northeasterly and southwesterly course through the city. The Atchison, Topeka & Santa Fé Railroad is crossed by the Chicago & Alton tracks and the Chicago, Indiana & Southern tracks in block eighty-one (81), a few hundred feet south of Main st., and by the Wabash tracks at a point near Lundy st. about one-half mile south of Main st.

The tracks of the petitioner enter the city from the north and then traverse various streets until Main st. is reached at the point where it is intersected by the tracks of the Atchison, Topeka & Santa Fé Railroad Company. From this point south to the city limits the petitioner has obtained a private right-of-way west of, and immediately adjoining the right-of-way of the Atchison, Topeka & Santa Fé Railroad Company. In building its line south from Main st. petitioner will necessarily have to cross the tracks of the Chicago & Alton Railroad Company, the Chicago, Indiana & Southern Railroad Company and the Wabash Railroad Company immediately west of the crossings of these several roads with the Atchison, Topeka & Santa Fé Railroad Company.

The only question in the case as to these three crossings, is, whether or not they shall be made at grade.

On the hearing it was conceded by the representatives of all the interested parties who were present, that it would be impracticable to construct a subway or an overhead crossing at either of the points mentioned and our inspection of the proposed crossings, leads us to believe this position is correct. All of the crossings are located in thickly settled portions of the city and are so located with reference to the nearby streets that it would be utterly impossible to construct either overhead crossings or subways without seriously interfering with the use of such streets. We are therefore of opinion that the three crossings mentioned should be made at grade, but that each of such crossings should be protected by an interlocker, or by some other device which will afford proper protection to persons and property. The Wabash-Santa Fé crossing is protected by an interlocker and no reason is perceived why the petitioner should not be required to protect its crossing with the Wabash in the same manner, either by the construction of an independent plant, or by extending the plant already in operation at that point so as to cover its tracks. As to the Chicago & Alton and the Chicago, Indiana & Southern crossings which are but a few feet apart, both of these roads object to the installation of an interlocker because it would interfere with the use of their respective yards, which are located very near the point of the proposed crossings. We are not inclined, however, to permit these crossings to be

put in without being protected in some manner. It may be that the petitioner, after further consideration, will be able to suggest some scheme of protection which the commission will feel justified in approving.

The three remaining crossings asked for by the petitioner are all on Main st., west of the point where the Atchison, Topeka & Santa Fé Railroad crosses such street.

We see no necessity whatever for the construction of an additional crossing over the Chicago & Alton and the Chicago, Indiana & Southern tracks on Main st. These tracks are both crossed by what the petitioner calls its through line, less than one block south of Main st., and if the petitioner desires to construct a line on Main st. it can easily do so by branching from its "through line" on Bridge st., one block south of Main st., and then reach Main st., either over Everett st. or Wasson st. The request, therefore, for permission to cross the Chicago & Alton and the Chicago, Indiana & Southern tracks on Main st. is denied.

The remaining crossing asked for is over the tracks of the Chicago, Burlington & Quincy Railroad Company on Main st., in the business district of the city. A separation of grades at this point is out of the question. The Burlington road enters the city from the north and its tracks extend south through the city to the south line of Main st. where they connect with the tracks of the Wabash Railroad Company which comes into our city from the south. No regular trains are run over these tracks across Main st., and they are only used for the interchange of business between the Wabash and Burlington roads. We see no objection to the construction of a grade crossing at this point, to be protected, however, in the manner hereinafter provided.

It is not the purpose of this commission to place unnecessary obstacles in the way of the construction or extension of electric or steam railroads in this State. The time has arrived, however, when greater care should be exercised in protecting the public against accidents. It is therefore the settled policy of this commission, when one railroad desires to cross another, to require such crossing to be made by a subway or overhead crossing whenever and wherever it is practicable and feasible so to do. Where it is not possible to separate the grades, we have in every case required the crossing to be protected either by an interlocking device or by some system of derrails or signals which would serve to minimize the dangers always present in a greater or less degree where two railroads are permitted to construct a crossing at grade. We are aware of the fact that the installation and operation of these protective devices involve the expenditure of considerable sums of money, but we cannot balance this expense against the loss of life or limb.

It is therefore ordered and decided, that the petitioner, the Chicago, Ottawa & Peoria Railway Company be and it is hereby granted permission to cross with a single track at grade the main track of the respondents the Chicago & Alton Railroad Company and the Chicago, Indiana & Southern Railroad Company at a point west of and immediately adjoining the right-of-way of the Atchison, Topeka & Santa Fé Railway Company in block number eighty-one of the Vermillion Coal Company's

addition to the city of Streator, La Salle county, Illinois, the right-of-way for such crossing being first obtained as provided by law; that such crossings shall be furnished, placed and maintained by the petitioner, the Chicago, Ottawa & Peoria Railway Company at its own expense; that the trolley wire of the petitioner shall be suspended not less than twenty-two feet above the top of the rails at each of said crossings, and shall be protected by a trolley guard of approved design; that each of such crossings shall be protected by an adequate system of derails and signals to be installed and maintained by and at the expense of the petitioner, the Chicago, Ottawa & Peoria Railway Company; that said Chicago, Ottawa & Peoria Railway Company cause to be prepared and presented to this commission, without unnecessary delay, complete and detailed plans and specifications of the protective devices proposed to be installed at said crossings and each of them for the approval of this commission, and that in the operation of said protective devices, and in the use of said crossings and each of them, trains on the roads of the respondents shall be given preference over the cars or trains on the petitioner's road. Should any question arise as to the division of the expense of operating any protective device installed at said crossings, or either of them, such question will be determined by the commission when the plans and specifications for such devices are presented for approval.

It is further ordered and decided that the petitioner, the Chicago, Ottawa & Peoria Railway Company be, and it is hereby granted permission to cross with a single track, at grade, the main track of the respondent, the Wabash Railroad Company, at a point west of and immediately adjoining the right-of-way of the Atchison, Topeka & Santa Fé Railway Company south of Lundy st., in the city of Streator, county of La Salle, State of Illinois, the right-of-way for such crossing being first obtained as provided by law; that such crossing shall be furnished, placed and maintained by the petitioner, the Chicago, Ottawa & Peoria Railway Company, at its own expense; that the trolley wire of the petitioner shall be suspended not less than twenty-two feet above the top of the rails at said crossing, and shall be protected by a trolley guard of approved design; that such crossing shall be protected by a proper and adequate interlocking device to be installed and maintained at the sole expense of the petitioner, the Chicago, Ottawa & Peoria Railway Company; that permission is granted the parties in interest to enlarge and extend the present interlocking plant located at the crossing of the said Wabash Railroad Company with the Atchison, Topeka & Santa Fé Railroad Company, so as to include the tracks of the petitioner, should the parties so desire; that said Chicago, Ottawa & Peoria Railway Company cause to be prepared and present to this commission without unnecessary delay, complete and detailed plans and specifications of the interlocker which it is proposed to construct at said crossing, or if the interlocker already located near said crossing is to be enlarged then the petitioner shall prepare and present to this commission complete and detailed plans and specifications of the additions to such interlocking plant for the approval of this commission, and that in the operation of said interlocking plant, and in the use of said crossing, trains on the road of the respondent

the Wabash Railroad Company, shall be given preference over the cars or trains on the petitioner's road. Should any question arise as to the division of the expense of operating the interlocking plant to be installed at said crossing, such question will be determined by the commission when the plans and specifications above referred to are presented for approval.

It is further ordered and decided that the petitioner, the Chicago, Ottawa & Peoria Railway Company, be and is hereby granted permission to cross with a single track, at grade the tracks of the respondent, the Chicago, Burlington & Quincy Railroad Company, at a point on Main st., in the city of Streator, LaSalle county, Illinois, where the tracks of said Chicago, Burlington & Quincy Railroad Company cross said Main st.; that such crossing shall be furnished, placed and maintained by the petitioner, the Chicago, Ottawa & Peoria Railway Company, at its own expense; that the trolley wire of the petitioner shall be suspended not less than twenty-two feet above the top of the rails at said crossing and shall be protected by a trolley guard of approved design; that such crossing shall be protected by the installation of derails in the tracks of the petitioner on both sides of said crossing, and not nearer than fifty feet to said crossing such derails shall always remain in the open position, except while being operated by the petitioner's employes to allow their trains to pass over said crossing, and such derails shall be operated by means of a lever placed on said crossing, such protective device to be installed and maintained at the sole expense of the petitioner, the Chicago, Ottawa & Peoria Railway Company; that said Chicago, Ottawa & Peoria Railway Company cause to be prepared and presented to this commission without unnecessary delay, complete and detailed plans and specifications of the protective device proposed to be installed at said crossing for the approval of this commission.

The installation of such protective device shall not be construed to authorize trains on the tracks of the Chicago, Burlington & Quincy Railroad Company to run said crossing without stopping.

It is further ordered and decided that this order shall not become effective until the plans and specifications for the various protective devices above referred to are presented to this commission and have been approved.

Dated at Springfield, Ill., this 30th day of December, A. D. 1908.

W. H. BOYS, *Chairman*;
B. A. ECKHART, *Commissioner*;
J. A. WILLOUGHBY, *Commissioner*.

ILLINOIS & INDIANA ELECTRIC RAILWAY COMPANY

V.

SOUTHERN RAILWAY COMPANY.

Appearances—For petitioner, Mr. A. H. Baer and Mr. W. E. Trautmann; for respondent, Messrs. Kramer & Kramer.

The petitioner in this case is organized under the general law relating to railroads, for the purpose of constructing and operating an interurban electric railroad.

By its petition filed herein it asks permission to cross at grade the main tracks of the respondent at the intersection of Fourth st. and Railroad av., and also at a point on Market st., about ninety feet northwest of its intersection with Eighth st., in the city of East St. Louis, Illinois.

An inspection of the proposed points of crossing has demonstrated the impracticability of separating the grades of the two roads at these points. Both of the proposed crossings are located in the thickly settled portion of the city and at points where the trains of the respondent and the cars of the petitioner should at all times be under full control.

It is therefore ordered and decided that the petitioner, the Illinois and Indiana Electric Railway Company, be and it is hereby granted permission to cross with its track at grade, the main track of the respondent, the Southern Railway Company, at the intersection of Fourth st. and Railroad av. and also at a point on Market st. ninety feet northwest of the intersection of Market and Eighth sts., in the city of East St. Louis, Illinois.

It is further ordered and decided that each of such crossings be protected by a proper and adequate interlocking device to be installed and maintained by and at the expense of the petitioner, the Illinois & Indiana Electric Railway Company; that the cost of operating said interlockers shall be divided equally between the parties; that said Illinois & Indiana Electric Railway Company cause to be prepared and presented to this commission without unnecessary delay, complete and detailed plans and specifications of the interlocking plants proposed to be installed at said crossings for the approval of this commission and that in the operation of such interlockers and the use of said crossings, trains on the respondent's road shall be given preference over the cars or trains on the petitioner's road.

It is further ordered and decided that each of such crossings shall be furnished, placed and maintained by the petitioner, the Illinois & Indiana Electric Railway Company at its own expense.

This order shall not be effective until the plans and specifications for an interlocking device shall have been approved by this commission.

Dated at Springfield, Ill., this 29th day of December, A. D. 1908.

W. H. BOYS, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

BELLEVILLE & INTERURBAN RAILWAY CO.

V.

ILLINOIS CENTRAL RAILROAD CO.

Appearances—For petitioner, Mr. A. B. Ogle; for respondent, Mr. John G. Drennan.

The petitioner, the Belleville & Interurban Railway Company, a corporation organized under the General Railroad Laws of this State, files its petition in this cause asking permission to cross with its main track the main track of the Illinois Central Railroad Company (formerly the Belleville and Carondelet Railway Company) at a point in the outskirts of the city of Belleville, at grade.

The place of the proposed crossing was viewed by the commission on June 22, 1908, and the case heard at the office of the commission in Springfield, Illinois, on September 8, 1908.

The evidence offered on the hearing showed the following facts: The petitioner proposes to construct a railroad from Belleville to Smithton for the carriage of both passengers and freight, and to operate the road in part as an electric line and in part as a steam railroad.

The branch road of the respondent extending west from Belleville is little used, no regular trains being at present operated. Near the point of the proposed crossing is located the plant of the Standard Brick Company, and the evidence shows that an engine is sent from Belleville by the respondent to this plant once a day, when it is in operation, for the purpose of doing such switching as may be necessary and taking out such loaded cars as they may have for shipment. About three times a week this engine is sent to a quarry some distance west of the Standard Brick Company's plant.

Were it not for the fact that the view of the proposed crossing is obstructed to some extent by the buildings of the Standard Brick Company, we would be inclined to permit this crossing to be constructed without requiring the same to be protected, and to rely upon the observance of section 75, chapter 114, Hurd's R. S., 1908, as a sufficient protection against accidents. The location of these buildings, however, is such as to prevent a view of one road by the trainmen on the other until within about one hundred feet of the crossing. Such being the case we are of the opinion that such crossing should be protected by a proper gate located at the intersection of the two roads, and so constructed and arranged as to bar the passage of trains on one road while the crossing is being used by the other.

It is therefore ordered and decided that the petitioner, the Belleville & Interurban Railway Company, be and it is hereby authorized to cross at grade with a single main track, the main track of the respondent, the Illinois Central Railroad Company, at a point on the center line of respondent's main track as now located, one hundred and seventy-two

feet in a southwesterly direction from the point of intersection of said center line with the west line of the east half of the southeast quarter of section number twenty-eight (28), in township number one (1) north, range number eight (8) west, in St. Clair county, Illinois.

It is further ordered and decided that such crossing shall be furnished, placed and maintained by the petitioner at its own expense and that said petitioner shall also furnish, place and maintain at said crossing a proper gate located at the intersection of the two roads, and so constructed and arranged as to bar the passage of trains on one road while the crossing is being used by the other, and that the petitioner shall cause to be prepared a plan or drawing of the gate proposed to be installed at said crossing and submit the same to this commission for its approval, and upon approval of the same this order shall become effective.

Nothing in this order contained shall be construed as authorizing either of the companies interested to run the said crossing without stopping. The commission reserves to itself the right at any time in the future to change or modify this order in any respect, and to require additional protection at said crossing should the necessities of the case demand it.

Dated at Springfield, Ill., this 29th day of December, A. D. 1908.

W. H. BOYS, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

ST. LOUIS AND ST. LIBORY RAILWAY COMPANY

V.

ILLINOIS CENTRAL RAILROAD COMPANY.

Appearances—For petitioner, Mr. Edward L. Thomas; for respondent, Mr. John G. Drennan.

The petitioner, the St. Louis and St. Libory Railway Company, a corporation organized under the general laws of the State of Illinois, filed its petition in this cause asking permission to cross with its railway the track and right-of-way of the Illinois Central Railroad Company on what is known as its St. Louis Division, about two and one-half miles south of Freeburg, St. Clair county, Illinois, by either a grade or under crossing as the commission may deem best, and to apportion the cost of the construction, maintenance and operation of said crossing between the parties as is by law provided.

The places of the proposed crossing were viewed by the commission on Feb. 1, 1909, and the case heard at the office of the commission in Springfield, Ill., on Feb. 2, 1909.

The evidence offered at the hearing shows the following facts:

That the petitioner is constructing a railroad from the east bank of the Mississippi river opposite the city of St. Louis, Missouri, in a southeasterly direction through the county of St. Clair, State of Illinois, to

the village of St. Libory, in said county and State, and proposes to operate the same by steam both for the carriage of passengers and of freight.

That the railroad of the respondent is their southern entrance to East St. Louis from their main line south, and is much used.

That at the points of the proposed crossings and on each side of the same for some distance, the respondent's line has a grade of about five-tenths of one per cent.

That at the point of the proposed under crossing there is a fill on respondent's line of about eleven (11) feet above the surface of the ground, and that at this point also a public highway from Freeburg to New Athens is located on the west side of respondent's track and wholly on respondent's right-of-way, which is one hundred feet wide at this point. That owing to the frequent passage of trains on respondent's track, and the grade of its track at the point of the proposed grade crossing over respondent's right-of-way and track, we are of the opinion that a grade crossing would be very inconvenient and troublesome for the handling of respondent's trains and at the same time dangerous, and we therefore eliminate the consideration of the proposed grade crossing, and decide on and approve the under crossing plan as presented by the petitioner with the changes, however, as noted below.

The evidence further shows an undesirable condition of the soil at the point of the under crossing and the necessary and difficult handling of a large quantity of surface water, which will make the under crossing much more expensive than under ordinary conditions.

It is therefore ordered and decided that the petitioner, The St. Louis and St. Libory Railway Company be and it is hereby authorized to cross by under crossing the right-of-way and track of the respondent as the same is now located, at a point as now surveyed and located, on the center line of respondent's track, distant four hundred and fifty-four (454) feet, more or less, southeasterly along said center line from respondent's Mile Post "E 24 No. 672," as the same is now located, said point of crossing being in the southwest quarter of section five (5), township two (2) south, range seven (7) west, St. Clair county, Illinois.

It is further ordered that the plans and specifications of said crossing shall be as submitted by petitioner with the following changes:

First—The plan for bridge for respondent's track shall be of reinforced concrete construction in accordance with the plans submitted by respondent to this commission at the hearing of this case, the maximum height allowed, however, from the bottom of the bridge to the top of respondent's rail to be not more than three (3) feet, making the top of rail of petitioner's line not less than twenty-five (25) feet below the top of rail of respondent's track, as the latter is now located.

Second—The concrete abutment walls to extend out to such a distance beyond respondent's track as will prevent sliding and caving of the embankment and sides of the cuts.

Third—The bridge for the public highway to be over petitioner's line at the present location of said highway, and to be built of such material and design as petitioner may see fit.

It is further ordered that the details of design and building of said crossing in accordance with the plans as laid down by the commission, shall be left to the engineers of the petitioner and of the respondent, and in case of a disagreement between the parties, the question shall be submitted to the commission for final decision.

It is further ordered that the expense of separating the grades at said crossing shall be paid by the railroads interested in the following proportion: two-thirds of such expense shall be paid by the petitioner, the St. Louis and St. Libory Railway Company, and one-third of such expense shall be paid by the respondent, the Illinois Central Railroad Company.

It is further ordered that the bridge over the public highway above described, be constructed and maintained at the sole expense of the petitioner, the St. Louis and St. Libory Railway Company.

Dated at Springfield, Ill., this second day of March, A. D. 1909.

W. H. BOYS, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

TOLEDO, ST. LOUIS AND WESTERN R. R. Co.

V.

DANVILLE, URBANA AND CHAMPAIGN RY. Co.

Appearances—For petitioner, Charles A. Schmettau; for respondent, George B. Gillespie.

About the year 1881 the Toledo, St. Louis and Western Railroad Company built its main track through the outskirts of the village of Ridge Farm, Ill., in a northeasterly and southwesterly direction, and since that time has operated its line as a steam railroad.

On July 31, 1902, the Danville, Urbana and Champaign Railway Company was organized under the General Railroad Laws of this State for the purpose of constructing a railroad from Danville, Ill., to Springfield, Ill., which road was to be operated by electricity.

The respondent's railroad was constructed into the village of Ridge Farm in the fall of 1905, and in the construction of its line it was necessary to cross the main line of the petitioner in the outskirts of the village. Under the laws of this State as they stood in 1905 railroad companies had the right to agree upon and construct crossings without the consent or approval of the commission.

When the respondent was about ready to construct its line from Danville to Ridge Farm, its representatives opened up negotiations with the representatives of the petitioner concerning the crossing at Ridge Farm. These negotiations dragged along for a considerable time, because of the inability of the parties to agree upon the terms of a contract. In the latter part of September, 1905, the petitioner was advised that the

respondent was about to put in a crossing at the point in question, without the formality of a contract, and without the consent of the petitioner, whereupon the petitioner applied to the General Manager of the respondent for information concerning the plans of his company and was assured that it was not the intention of respondent to steal a crossing, but that it intended in good faith, to enter into a contract with petitioner concerning the same. Upon the strength of these assurances, the petitioner proceeded with its negotiations with the respondent concerning the terms of the proposed contract. Some days later the petitioner was informed that it was the intention of the respondent to "force" the crossing on the following Saturday night. An attempt was made by petitioner to prevent the respondent from "forcing" the crossing by standing an engine on its tracks at the proposed point of crossing which was on one of the streets of the village.

Without going into further details, it is enough to say that the efforts of the petitioner to prevent the putting in of the crossing were ineffectual, and the crossing was completed in the early part of the month of October, 1905.

On October 30, 1905, the petitioner filed in the office of the secretary of this commission its petition against the respondent wherein it was alleged in substance, that the crossing in question was constructed on or about October 4, 1905; that petitioner had applied to respondent to protect said crossing with an interlocking or other safety device, but that respondent had refused to so protect said crossing; that on account of trees, buildings and other physical obstructions, cars approaching such crossing from either direction on respondent's line, were hidden from the view of employes operating trains on petitioner's road; that petitioner's track approaching said crossing from the west is on a descending grade of .28 per cent, and from the east on a descending grade of .45 per cent and that by reason of said grades, it is difficult to stop trains at said crossing; that petitioner operates over said crossing each day eighteen (18) freight trains and four (4) passenger trains and that because of such facts such crossing is dangerous to the public and to the employes of both the petitioner and the respondent.

In conclusion the petitioner prayed the commission to view the crossing and to require the respondent to construct and maintain at its own cost such interlocking device as the commission might require. After the respondent was served with notice of the filing of this petition, our predecessors viewed the crossing, and afterwards heard the case at the office of the commission in Springfield. The parties do not agree upon what transpired at such hearing, but inasmuch as no formal order was entered in said cause, that question is immaterial.

On June 10, 1908, the petition was re-docketed on motion of the petitioner, and afterwards the crossing viewed and the cause heard by the present commission.

We are satisfied from our view of the crossing and from the evidence offered on the hearing that the crossing is a dangerous one and should be protected by an interlocker. And in this conclusion both of the parties to this cause concur. The parties are, however, unable to agree upon the

kind of a device that shall be installed and they have failed to reach an agreement as to the proportion of the expense of installation and maintenance which each company shall bear. It therefore becomes our duty to decide these questions.

It is therefore ordered and decided that the respondent, the Danville, Urbana and Champaign Railway Company shall furnish and install at the crossing of its main track with the main track of the petitioners, the Toledo, St. Louis and Western Railroad Company, an interlocking system in which the machine or interlocking device is to be located in a one story cabin at some convenient place near said crossing and that such device shall include proper signals on the line of the petitioner, and derrails in the main tracks of both the petitioner and the respondent.

It is further ordered and decided that said interlocking system shall be constructed and installed in accordance with detailed plans and specifications furnished by this commission, a copy of which is hereto attached and made a part of this order.

It is further ordered and decided that in the operation of said interlocking system so to be installed, and until the further order of this commission, the parties hereto may operate said interlocker without the use of regular attendants except such as the respondent company furnishes in the way of train employes, when their trains or cars desire to cross, and that the signals governing the movement of trains on the petitioners road shall indicate "clear" at all times, except when trains or cars of the respondent company desire to pass over said crossing.

Under all the circumstances surrounding this case, we believe it to be but fair to depart, to some extent, from the ordinary rule regarding the apportionment of the expense of installing and maintaining interlocking plants at existing crossings.

It is therefore ordered and decided that the cost of constructing, installing and maintaining said interlocking plant shall be paid, one-fourth by the petitioner, and three-fourths by the respondent.

It is further ordered and decided that said respondent shall cause said interlocking system to be installed ready for operation within ninety days of the date of this order.

Dated at Springfield, Ill., this 15th day of April, 1909.

W. H. BOYS, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

MICHIGAN CENTRAL RAILROAD COMPANY

V.

CHICAGO AND SOUTHERN TRACTION COMPANY.

This matter coming on before the Railroad and Warehouse Commission of the State of Illinois, upon the supplemental petition of the Michigan Central Railroad Company, and the answer of the respondent,

Chicago and Southern Traction Company, thereto, both parties hereto being present before the commission, and the commission having heard the arguments of counsel, and having jurisdiction of the subject matter and of the parties hereto, the commission finds that the respondent, Chicago and Southern Traction Company has failed to comply with the order of the commission heretofore entered on the 14th day of May, A. D. 1906, and the further orders of the commission entered herein on the 1st day of May, 1907, and on the 9th day of July, 1908, and that the undercrossing at or near West End av., in the city of Chicago Heights, Cook county, Illinois, has not now been completed, as directed by the said order of May 14, 1906; that said undercrossing is not in process of construction, and that the construction of said undercrossing has not been commenced by the said Chicago and Southern Traction Company.

The commission further finds that since the entry of the order May 14, 1906, to-wit: in the month of December, 1908, an accident resulting in the death of one person has occurred at said crossing which would not have occurred if the said undercrossing had been constructed as heretofore directed by this commission.

It is therefore ordered by the commission, that the said Chicago and Southern Traction Company, respondent herein, shall begin on or before the 10th day of May, 1909, the actual construction of said undercrossing, as heretofore ordered by the commission on May 14, 1906, and shall fully and finally complete the same on or before the 10th day of July, 1909, and after said last mentioned date shall cross the tracks of the Michigan Central Railroad Company in the city of Chicago Heights, Cook county and State of Illinois, by means of said undercrossing and shall remove and discontinue the use of the grade crossing on West End av. in the city of Chicago Heights.

It is further ordered, that if the said Chicago and Southern Traction Company shall not on or before the 10th day of May, 1909, begin the actual construction of said undercrossing, or if the construction of said undercrossing as heretofore ordered shall not be fully and finally completed by said Chicago and Southern Traction Company on or before the 10th day of July, 1909, the permission heretofore granted by the commission to temporarily cross the tracks of the Michigan Central Railroad Company at grade in the city of Chicago Heights, shall *ipso facto* be withdrawn, and in such event, or any or either of them, the said Michigan Central Railroad Company may remove the rails, crossing frogs and other appurtenances of the said grade crossing of said Chicago and Southern Traction Company from the right-of-way of the said Michigan Central Railroad Company.

Dated at Springfield, Ill., April 15, A. D. 1909.

W. H. BOYS, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

ST. LOUIS AND ILLINOIS BELT RAILWAY

V.

ST. LOUIS, TROY AND EASTERN RAILROAD COMPANY.

Appearances—For petitioner, Mr. L. O. Whitnel; for respondent, Mr. E. H. Conrades.

The petitioner, the St. Louis and Illinois Belt Railway, is a corporation organized and existing under the laws of this State for the purpose of constructing, operating and maintaining a steam railroad between the city of Edwardsville, county of Madison and State of Illinois, and a point on the Mississippi river near the boundary line common to St. Clair and Monroe counties, State of Illinois.

The railroad of the petitioner as located and in course of construction makes it necessary and desirable to cross the main track of the St. Louis, Troy and Eastern Railroad Company at a point in the northwest quarter of section seven (7), township three (3) north, range seven (7) west in said county of Madison; and in its petition filed in this cause, which is accompanied by an agreement between the parties hereto, the petitioner asks that leave be granted to cross with its main track the main track of the respondent, at grade.

The answer filed by the respondent company on Feb. 15, 1909, is in the form of an agreement between the parties hereto and a duplicate of the one above referred to. The respondent company interposes no objection to the construction of such a crossing. The commission viewed the location of this proposed crossing on May 1, 1909.

It appearing that both railroads are located upon private right-of-way, and it appearing further upon representations made to this commission that a majority of the stockholders and officers in the St. Louis, Troy and Eastern Railroad Company are also officers and stockholders in the St. Louis and Illinois Belt Railway, and that owing to the fact that only freight traffic is carried over the tracks of the St. Louis, Troy and Eastern Railroad Company, and that it is the intention of the St. Louis and Illinois Belt Railway to carry nothing but freight traffic over its line when completed and ready for operation, and that no passengers are now being carried over the tracks of the respondent company, nor is it the intention of the petitioner, the St. Louis and Illinois Belt Railway to carry passenger traffic over its line when completed and ready for operation, the commission does not deem it necessary from the foregoing facts to cause a separation of grades to be maintained at this crossing.

It is therefore ordered and decided that the petitioner, the St. Louis and Illinois Belt Railway have leave, and it is hereby empowered, to cross with its main track, the main track and right-of-way of the respondent, the St. Louis, Troy and Eastern Railroad Company (the right-of-way for such crossing being first obtained as required by law) at a point in the northwest quarter of section seven (7), township three (3) north,

range seven (7) west in said county of Madison, said point of crossing being more particularly described and set forth in the petition filed herein, and that said crossing shall be at grade.

It is further ordered that the petitioner, the St. Louis and Illinois Belt Railway shall construct said grade crossing at its sole expense.

Considering the character of traffic which will pass over the tracks of the railroad companies, parties to this cause, and such other information as has been presented to the commission for its consideration, and it appearing further from the agreement entered into between the parties hereto that the petitioner, the St. Louis and Illinois Belt Railway, has obligated itself to erect and maintain at its own cost and expense, an interlocking device at said crossing whenever the respondent, the St. Louis, Troy and Eastern Railroad Company, or the Railroad and Warehouse Commission deems it necessary that said crossing shall be equipped with an interlocking system, it therefore appears unnecessary at this time to require this crossing to be equipped with an interlocking system.

Dated at Springfield, Ill., this 9th day of June, A. D. 1909.

B. A. ECKHART, *Acting Chairman*;
J. A. WILLOUGHBY, *Commissioner*.

ORDER DEFINING CLEARANCES FOR OVERHEAD OBSTRUCTIONS.

September 7, 1909.

The matter of subways and overhead crossings being before the commission for consideration and it appearing from the examination of the records of the office that the requirements, heretofore, of the commission in relation to such crossings have been that the plans presented for such crossings should show an open clearance of twenty-two (22) feet from the top of the rail on the under track to the bottom of the bridge carrying the overhead tracks.

And it further appearing that such distance or clearance is the proper distance or clearance, and the commission being fully advised, confirms the action of the commission in approving such plans from time to time; and

It is therefore ordered that, hereafter, all plans and specifications presented for overhead or subway crossings shall show a clearance of twenty-two (22) feet perpendicular from the top of the lower track to the lowest part of the structure carrying the upper or overhead track.

That no plans for such crossings shall hereafter be approved without showing such clearance: *Provided*, That in case any road making a crossing, either overhead or subway, may present to the commission their petitions for a less clearance, if they so desire, upon a proper showing the commission may change such clearances but it shall not be so changed without the unanimous consent of the commission acting upon such petition.

By order of the commission.

ORVILLE F. BERRY, *Chairman*;
B. A. ECKHART, *Commissioner*;
J. A. WILLOUGHBY, *Commissioner*.

WATCHMEN, C. & A., ET AL CROSSINGS—SPRINGFIELD.

SPRINGFIELD, ILL., April 14, 1910.

In relation to the operation of gates and the duties of watchmen at the several crossings of the Chicago & Alton R. R. Co., in the city of Springfield; of the Baltimore & Ohio Southwestern R. R. Co., in the city of Springfield; of the Chicago, Peoria & St. Louis Ry. Co., in the city of Springfield; of the Illinois Central R. R. Co., in the city of Springfield, and of the Wabash R. R. Co., in the city of Springfield, it has come to the knowledge of the Railroad and Warehouse Commission of the State of Illinois that the gates at the crossings of several streets of the city of Springfield are operated only from 7:00 o'clock in the morning until 6:00 o'clock in the evening of each day and that the watchmen at the several crossings of the several roads in the city of Springfield are on duty only from 7:00 o'clock in the morning until 6:00 o'clock in the evening of each day, and whereas it has come to the knowledge of said commission from complaints from a number of citizens of the city of Springfield, and the chairman of said commission having made investigation of the condition of such crossings, in the city of Springfield, and in view of such conditions and a recent collision on one of said crossings in said city and for the protection of the interests of the public, as well as of the electric roads and steam roads and the street railway operating in the city of Springfield, and the commission being fully advised in the premises does hereby order and adjudge and decree that the said several railroads which are now maintaining watchmen and operating gates at any of the said several crossings within the city of Springfield, shall continue the operation of such gates and shall have a watchman on duty at said several crossings from 7:00 o'clock in the morning until 12:00 o'clock midnight, and it is further ordered that said railroads nor none of them shall operate within the city of Springfield, switching trains through the city by pushing the same, unless the rear car on said train shall have placed upon it a large and distinct red light or red lights and then not to exceed a speed of six miles an hour and with at least 50 per cent of the cars on said train connected with the engine so that steam brakes may be used, and it is further ordered that all lights at the several crossings, if any are to be maintained by the several roads, shall be properly maintained and lighted.

This order shall be and remain in force, until further order of this commission, from April 15, 1910.

By order of the commission.

ORVILLE F. BERRY, *Chairman.*

IN THE MATTER OF THE PETITION OF THE EAST ST. LOUIS, COLUMBIA
AND WATERLOO RY., TO CROSS THE TRACKS OF THE ILLINOIS TRANSFER
R. R. IN THE COUNTY OF ST. CLAIR, STATE OF ILLINOIS.

On this day comes the petitioner, the East St. Louis, Columbia and Waterloo Ry., a corporation organized and existing under and by virtue of the laws of the State of Illinois, for the purpose of constructing, maintaining, and operating a railroad from the city of East St. Louis, in the county of St. Clair, State of Illinois, to the city of Waterloo in the county of Monroe, State of Illinois. It appearing to the commission from said petition that it has entered into an agreement with the Illinois Transfer R. R. Co., for a right-of-way across the grounds and tracks of the respondent company; and it appearing to the commission that said petition in such cause together with said agreement and plat have been properly filed with the commission, and the commission having jurisdiction of the respective parties and the subject matter and having examined said crossing, as required by law; and it appearing to the commission that a grade crossing at such point will not obstruct nor endanger public travel and that any other character of crossing would be impracticable at such point and the respondent road being only a switching road.

It is therefore ordered, adjudged, and decreed that the petitioner, the East St. Louis, Columbia and Waterloo Ry., is hereby authorized and empowered to cross the track of the Illinois Transfer R. R. in the county of St. Clair at the point fully described in said agreement and said plat attached to said petition and made a part thereof.

It is further ordered by the commission that such crossing be properly protected by a trolley guard of modern and improved design.

It appearing from said agreement attached to said petition that the respective parties have agreed as to the proper division of costs of said crossing, the commission makes no order in relation thereto.

It is further ordered by the commission that the secretary of the commission present to the petitioner a bill of \$30.00 for the expense of said commission in examining said crossing.

The commission hereby retains full jurisdiction of this cause for the purpose of making any further order necessary in relation thereto and particularly for the purpose of making a final order after such crossing is made and report thereof approved by the consulting engineer of this commission.

By order of the commission this 5th day of July, 1910.

ORVILLE F. BERRY, *Chairman*;
B. A. ECKHART, *Commissioner*;
J. A. WILLOUGHBY, *Commissioner*.

DANVILLE & EDWARDSVILLE TERMINAL RAILROAD COMPANY

v.

TOLEDO, ST. LOUIS & WESTERN RAILROAD COMPANY,

LITCHFIELD & MADISON RAILROAD COMPANY,

ST. LOUIS & ILLINOIS BELT RAILWAY COMPANY

AND

THE ILLINOIS TERMINAL RAILROAD COMPANY.

The petitioner, herein, the Danville & Edwardsville Terminal Railroad Company, is a corporation organized under the general railroad laws of the State of Illinois and has located a line of belt railway in the vicinity of the suburban parts of the city of Edwardsville in the State of Illinois, and the petition herein is for permission to cross the tracks of the Toledo, St. Louis & Western Railroad Company, the Litchfield & Madison Railroad Company and the Illinois Terminal Railroad Company at points in Madison county, Illinois, as follows: The Toledo, St. Louis & Western Railroad tracks in the southeast quarter of section 14, township 4 north, range 8 west of the third principal meridian and approximately 125 feet east and 42 feet south of the northwest corner of the southeast quarter of said section 14; the Litchfield & Madison Railroad tracks and the Illinois Terminal Railroad tracks at a point approximately 100 feet distant from the point where your petitioner will cross the Toledo, St. Louis & Western Railroad tracks on the location line of the petitioner, as its location has been determined by survey and location monuments, a blue print, showing the precise location of said tracks and crossings, is annexed to the petition herein and is hereby referred to for specific location and description of said crossings. The original petition filed herein also asked permission to cross the St. Louis & Illinois Belt Railway Company's tracks, but upon the coming in of the answer of the St. Louis & Illinois Belt Railway Company, it appears that its line is not crossed but that the line actually crossed is the property of the Illinois Terminal Railroad Company and the petition has been amended to conform to the facts.

The petitioner has obtained right-of-way for the location of said terminal belt railway and will construct the same, as located, and when so constructed, the same will form a link or part of the system of electric railways entering the city of Edwardsville and operated under the general name, Illinois Traction System. The petitioner is purely a belt line and is designed to form track connections with the various railroads entering the city of Edwardsville for the purpose of interchanging freights between said Illinois Traction System and said railways, the movement of freights to and from industries located on said belt railway and upon sidings and connections therewith and with the railways, sidings, switches and industrial tracks of the same. Said

belt line is also designed for the movement of freights over the line of said Illinois Traction System and around the city of Edwardsville and is necessary to the business of the petitioner to facilitate the operation of freight trains and cars over its line without the same passing through the city streets of the city of Edwardsville. As located the line of the petitioner will cross the lines of the Toledo, St. Louis & Western Railroad Company, the Litchfield & Madison Railroad Company and the Illinois Terminal Railroad Company at a point approximately 800 feet north of where the St. Louis & Illinois Belt Railway tracks cross the tracks of the Toledo, St. Louis & Western Railroad Company and the Litchfield & Madison Railroad Company and connect with and form an extension of its line with the line of the Illinois Terminal Railroad Company; the said crossings between said railways are protected by an interlocking device, operated from a tower by the ordinary method, located a distance of about 400 feet south of the crossing of the tracks of the petitioner over the tracks of the respondents as the same has been located and as the petitioner prays for permission to cross the line of the petitioner, as located, would cross the railways of the respondents on a descending gradient of 1 per cent for a distance both east and west of said railways; at a point about 1,500 feet east of said crossing the railway of the petitioner crosses the interurban electric line of the Troy Suburban Railway Company on a city street of the city of Edwardsville and said crossing must be at grade, in order to prevent an obstruction to said street and an interference with travel thereon.

In approaching from said crossing with the Troy Suburban Railway to the crossings prayed for the elevation is such that in order to maintain a grade crossing with the Troy Suburban an overhead crossing, which would afford requisite clearance to the railways proposed to be crossed, would unnecessarily and unduly increase the gradient of petitioner's line above its maximum gradient and would interfere with the construction of safe and convenient track connections between the railway of the petitioner and the railways of respondents.

The line of petitioner at the proposed crossing and for a distance of 1,500 feet east and 2,400 feet west of said crossing is practically straight; it is entirely practical to protect the proposed crossing from the interlocking tower already established to protect crossings between respondents, as aforesaid, and the descending grade approaching toward said crossing on the line of the petitioner would commence at points several hundred feet within the distance signals to be located upon your petitioner's railway for the protection of said crossing.

The finding of this commission, upon consideration of the petition for the crossing aforesaid between the lines of the respondents and which is already protected by an interlocking device, installed in accordance with an order of this commission heretofore entered was that said crossing so protected would not unnecessarily impede or endanger travel or transportation upon the railroads so crossed and the condition of the crossing prayed for herein being in close proximity to the crossing aforesaid, is necessarily controlled by the same conditions and it appears

from the evidence that the crossing prayed for will not unnecessarily impede or endanger the travel or transportation upon the railways of the respondents.

And now the said Railroad and Warehouse Commission having heard the evidence herein, together with the argument of counsel and having made full investigation with regard to the safety of life and property by personally visiting and viewing the places of the proposed crossings, as well as by a consideration of said testimony, said commission finds: That the respondents herein have all answered the petition; that the commission has full power and jurisdiction of the subject matter and the parties to this proceeding; that the places selected by the petitioner are suitable locations for said crossings at grade; that it would be unnecessarily burdensome upon petitioner and an unnecessary interference with its right to track connections with the respondents to require overhead crossings; that with a suitable interlocking device, in accordance with regulations prescribed by this commission, grade crossings between the petitioner and the respondents, as prayed, would secure the safety of life and property being transported upon said railways and that grade crossings, as prayed, will not unnecessarily impede or endanger the travel or transportation upon the railroads crossed.

It is therefore ordered, adjudged and decreed that the prayer of the petitioner be granted, and, having first obtained right-of-way therefor, shall have permission to cross the tracks of the respondents at grade as prayed for in said petition, and that said petitioner may cross at grade the Toledo, St. Louis & Western Railroad Company at a point in Madison county in the southwest quarter ($\frac{1}{4}$) of section fourteen (14), township four (4) north, range eight (8) west of the third (3d) P. M., and approximately one hundred and twenty-five (125) feet east and forty-two (42) feet south of the northwest corner of the southeast quarter ($\frac{1}{4}$) of said section fourteen (14) at the place designated upon the plat, submitted with such petition, and according to such plat. That the said petitioner shall have the right to cross at grade the Litchfield & Madison Railroad Company and the Illinois Terminal Railroad Company at or near the point where the Litchfield & Madison Railroad Company is crossed at grade by the Illinois Terminal Railroad Company and at a point which is approximately one hundred (100) feet distant from the point where your petitioner will cross the Toledo, St. Louis & Western Railroad Company; that the crossing of the said Litchfield & Madison Railroad Company is located in the southeast quarter ($\frac{1}{4}$) of section fourteen (14), township four (4) north, range eight (8) west of the third (3d) P. M. in the county of Madison, State of Illinois, and approximately forty-two and a half ($42\frac{1}{2}$) feet south and five (5) feet east of the northwest corner of said southeast quarter ($\frac{1}{4}$) of said section fourteen (14).

That the crossing of the Illinois Terminal Railroad Company is located in the southeast quarter ($\frac{1}{4}$) of section fourteen (14), township four (4) north, range eight (8) west of the third (3d) P. M., county of Madison and State of Illinois, and approximately forty-two and a half ($42\frac{1}{2}$) feet south and eight (8) feet east of the northwest corner of

said southeast quarter ($\frac{1}{4}$) of said section fourteen (14), at which place the said petitioner, first having obtained the right-of-way, may cross at grade said roads. A blue-print plat marked Exhibit "A," showing the location of the crossing of the tracks of the petitioner with said roads above referred to, is attached to said petition and referred to herein for accuracy; that the petitioner shall protect said crossing by interlocker from the interlocking tower located about 400 feet south of said crossing and that it shall pay the entire expense of installing a standard interlocking crossing device to be operated from said tower, together with such additional changes or modifications of said tower, its devices and operating parts as it shall be necessary to change, in order to operate said interlocking device and protect said crossing, in accordance with the regulations prescribed by this commission; that the operating expense of said plant for the protection of said crossing shall be borne by the petitioner and the respondents, the Toledo, St. Louis & Western Railroad Company, the Litchfield & Madison Railroad Company and the Illinois Terminal Railroad Company, each one-fourth ($\frac{1}{4}$); that plans for the alteration and installation of said interlocking device, as provided by this order, shall be approved by the chief engineer of each, the petitioner and the respondents, and submitted to this commission for approval. Such crossing shall be equipped with a trolley guard of improved pattern.

Jurisdiction hereof is hereby reserved for the purpose of considering the plans aforesaid and for the purpose of making such supplemental orders as shall become necessary in the enforcement of the findings and order of this commission.

Dated this 31st day of May, A. D. 1910.

ORVILLE F. BERRY, *Chairman*;
J. A. WILLOUGHBY, *Commissioner*.

DISSENTING OPINION OF COMMISSIONER B. A. ECKHART.

In this case the petitioner, the Danville & Edwardsville Terminal R. R. Co., desires to cross at grade, in an easterly and westerly direction, the tracks of three railroad lines at a point approximately midway between the crossing formed by the track of the St. Louis & Illinois Belt Ry. Co., and the tracks of the Toledo, St. Louis & Western R. R. Co., and the crossing of the track of the Illinois Terminal R. R. Co., with the track of the Litchfield & Madison Ry. Co. At the point of the proposed crossing the existing tracks are located in a cut about ten feet in depth, the line of the Danville & Edwardsville Terminal R. R. Co. is, therefore, favorably located for constructing its road over the tracks of the respondent companies at a reasonable cost.

The physical and topographical conditions are most favorable for an overhead crossing. It is practicable to construct a Y connection at this point for an overhead crossing with the respondent companies' tracks. The first cost of an overhead crossing and a Y connection may be a little more than a grade crossing and a Y connection at grade, but it would be absolutely safe and would answer the requirements of the petitioner companies and respondent companies for all time to come.

The commission has the power under the statute to assess the senior road one-third of the cost of construction in cases where separation of grades are ordered, and the expense of separating grades at this point could be divided between the four lines of railroad; therefore, the amount that each road would have to bear would not be burdensome.

The petitioner companies road will operate both freight and passenger trains and the respondent road will carry passenger and freight trains over some of the lines at the point of the proposed crossing. It must, therefore, be classed and considered as a dangerous crossing.

It is the avowed policy of the Illinois Commission to insist upon a separation of grade when it is practicable to do so in the interest of safety of life and property. We should not depart from this policy except in cases where the physical conditions or the cost of construction make a separation of grades prohibitive. In this case the physical conditions are favorable for an overhead crossing and the cost of construction reasonable.

In view of these facts I must dissent from the other members of this commission and give as my best judgment that the order asked for should not be granted.

B. A. ECKHART, *Commissioner*.

DANVILLE & EDWARDSVILLE TERMINAL RAILROAD

V.

ST. LOUIS MERCHANTS' BRIDGE TERMINAL RAILWAY COMPANY

AND

CHICAGO, PEORIA & ST. LOUIS RAILROAD COMPANY.

This is a petition filed by the Danville & Edwardsville Terminal Railroad Company, a railway corporation organized under the general railroad laws of the State of Illinois. The petition prays for a grade crossing over the railways of the respondents, the St. Louis Bridge Terminal Railway Company and the Chicago, Peoria & St. Louis Railroad Company. The St. Louis Bridge Terminal Railway Company is a corporation engaged in the terminal business, having lines located in the cities of St. Louis, in the state of Missouri, East St. Louis, Granite City, Madison and Venice, in the State of Illinois, and controlling both the Eads Bridge and the Merchants' Bridge located across the Mississippi river. It owns a main line, but is a switching terminal railway and the lines over which the petitioner prays for a crossing is only about three miles in length and is a switching track, for the purpose of moving traffic to and from industrial tracks and sidings and delivering the same to and from the railways terminating in the cities aforesaid. Said railway company operates no trains upon said line nor are the movements thereon according to any schedule or time table. The place where the petitioner prays that its railway may cross the railway of the St. Louis

Bridge Terminal Railway Company is in the city of Granite City, county of Madison and State of Illinois, and located in the southeast quarter of section 24, township 3 north, range 9 west of the third P. M. and approximately 520 feet south of and 1,110 feet east of the center line of section 24 and at the intersection of "G" st. and "16th" st. in said Granite City; because of the physical surroundings, it will be impossible to cross the said tracks of the said St. Louis Merchants' Bridge Terminal Railway Company, except at grade.

A blue print of the said crossing is herewith filed and made a part of this order and marked "Exhibit A."

The point of said crossing is upon the intersection of "G" st. and "16th" st. in said city of Madison, and the surface of the ground is practically level, the tracks of the Bridge Terminal not being upon any elevated embankment. The respondent, the Chicago, Peoria & St. Louis Railway Company, is a corporation organized under the general railway laws of the State of Illinois, and the line over which the petitioner prays a grade crossing is in the village of Madison, county of Madison and State of Illinois, and located more particularly in the southeast quarter of section 24, township 3 north, range 9 west of the third P. M. and at a point approximately 1,780 feet south and 480 feet east of the center line of section 24 and 125 feet south of the south line of 16th st. on "G" st. in the said village of Madison; the place at which your petitioner's tracks will cross the tracks of the said Chicago, Peoria & St. Louis Railroad Company is within the village limits of the said village of Madison and is in a public street in said village.

A blue print of said crossing is filed and made a part of this order and marked "Exhibit B."

The railway of the respondent, the Chicago, Peoria & St. Louis Railway Company, is operated by a regular schedule and has several train movements in each direction every day. The location of said crossing is at a point on "G" st. in the city of Granite City, southward from the proposed crossing with the Bridge Terminal a distance of about 1,300 or 1,400 feet and southward from 14th st. a distance of about 100 feet, the surface of the ground at the point of intersection is flat, the railway of the respondent, the Chicago, Peoria & St. Louis Railway Company, being upon no elevated embankment.

Running parallel with the proposed line of petitioner on the next street east, being Madison st., a distance of about 300 feet, is the Alton, Granite City & St. Louis Traction Company, having a double track on said street, and west of the proposed line of the petitioner, about the same distance on State st., running parallel with the line of petitioner, is located the street railway of the Citizens Railway Company of Venice.

Said crossings are located within the corporate limits of the village of Madison and the city of Granite City and the respondents in the operation of their respective railways are required under conditions already existing, to have their trains and cars under control in moving across the tracks of the Alton, Granite City & St. Louis Traction Company and the tracks of the Citizens Railway Company of Venice

aforesaid. The track of the petitioner will be located its full length in "G" st. in the city and village aforesaid, and will be, when completed, a double track road forming a connecting link between an extensive system of electric railways and a double track railway bridge being constructed over the Mississippi river to furnish an entrance for said system into the city of St. Louis. A number of cross streets, both north and south of said crossings, are crossed by the line of the petitioner. In order to maintain a suitable grade for operating said line an overhead crossing over the railways of respondent would compel the construction of steel trusswork in the city streets for a distance of about 6,000 feet and would practically obstruct and destroy the use of said street as a public thoroughfare. It would also cost a large sum of money to build and maintain said structure, if authority could be obtained for that purpose. It appears that the franchise of the petitioner would not authorize the construction of a structure in the street aforesaid. It further appears that the physical conditions at said crossings are not suitable for either an overhead or subway crossing and that grade crossings would not unnecessarily impede or endanger travel or transportation upon the railways of respondents, but that to order a separation of grades between the railways of petitioner and the respondents would be unnecessarily burdensome, both upon the petitioner and upon the public street of the city and village aforesaid, even if authority could be obtained for the construction thereof and the conditions are such that grade crossings should be allowed.

And now the said Railroad and Warehouse Commission having heard the evidence herein, together with the arguments of counsel and having made full investigation with regard to the safety of life and property by personally visiting and viewing the places of the proposed crossings, as well as by a consideration of the testimony offered herein, said commission finds: That the respondents have all answered the petition; that the commission has full power and jurisdiction of the subject matter and of the parties to this proceeding; that the places selected by the petitioner are suitable locations for said crossings; that it would be unnecessarily burdensome upon petitioner to require either a subway or an overhead crossing; that with suitable interlocking devices, in accordance with the regulations prescribed by this commission, a grade crossing between the petitioner and respondents as prayed would secure the safety of life and property being transported upon said railways, and the grade crossings, as prayed for, would not unnecessarily impede or endanger the travel or transportation upon the railroads crossed.

It is therefore ordered, adjudged and decreed that the prayer of the petitioner be granted and that having first obtained right-of-way therefor, the petitioner shall have permission to cross the tracks of the respondent at grade as prayed for in said petition and that said petitioner may cross at grade the railway of the St. Louis Merchants' Bridge Terminal Railway Company in the city of Granite City, county of Madison and State of Illinois, and located in the southeast quarter of section 24, township 3 north, range 9 west of the third principal

meridian, and approximately 520 feet south of and 1,110 feet east of the center line of section 24 and at the intersection of "G" st. and "16th" st. in said Granite City.

A blue print of the said crossing is herewith filed and made a part of this petition and marked "Exhibit A."

And the tracks of the Chicago, Peoria & St. Louis Railroad Company in the village of Madison, in the county of Madison and State of Illinois, and located more particularly in the southeast quarter of section 24, township 3 north, range 9 west of the third principal meridian, and at a point approximately 1,770 feet south and 480 feet east of the center line of section 24, and 125 feet south of the south line of 16th st. on "G" st. in the said village of Madison.

A blue print of said crossing is attached to and made a part of this petition and marked "Exhibit B."

That a standard interlocking device be installed at the crossing aforesaid at the expense of the petitioner and that the maintenance thereof be borne by the petitioner as to each crossing between the petitioner and the respondent whose railway is crossed; and that the operation of such interlocker be paid one-third each by such roads; that plans and specifications for said interlockers be approved by the chief engineer of the petitioner and the respondent interested and the same submitted to this commission for its approval.

Such crossing shall be equipped with a trolley guard of improved pattern.

It is further ordered that the petitioner pay the expense of the examination of such crossings and the secretary of the commission shall present a bill to said petitioner for \$30.00 for the examination of each of said crossings.

Jurisdiction of this cause is hereby reserved for the purpose of approving said plans and specifications and for the purpose of making such supplementary orders as may be necessary to carry out and enforce the order hereby entered.

May 31, 1910.

ORVILLE F. BERRY, *Chairman*;
B. A. ECKHART, *Commissioner*;
J. A. WILLOUGHBY, *Commissioner*.

IN THE MATTER OF THE HAMILTON CLAY MANUFACTURING COMPANY
FOR PERMISSION TO BUILD A SWITCH PASSING UNDER A PUBLIC HIGH-
WAY BRIDGE WITH A CLEARANCE UNDER SAID BRIDGE OR VIADUCT OF
ONLY NINETEEN FEET.

This matter coming on before the commission for hearing, A. W. O'Hara, representing the Hamilton Clay Manufacturing Company, and R. I. Wilby, assistant engineer of the Toledo, Peoria & Western Railway Company, representing said company, and it appearing to the commission that the petition herein has been properly filed and that they have juris-

diction of the subject matter and of the parties in interest, and it appearing from said petition that the Hamilton Clay Manufacturing Company is a manufacturing plant located in the city of Hamilton, Hancock county, Illinois; that it is desirous of having a side or switch track from the main line of the Toledo, Peoria & Western Railroad Company in said city of Hamilton to its manufacturing plant located in said city, that the said Toledo, Peoria & Western Railway Company is now at work building a suitable side or switch track to said plant, that in the construction of said switch it is necessary to pass under a public highway at a place where there is at present a fill of about fourteen feet in height, that certain of this fill is to be removed by the city of Hamilton and a bridge substituted under which the said side track or switch is to be built.

It appearing to the commission from the evidence offered that it will be impossible to raise the said grade more than five or six feet, thereby giving a clearance under the bridge or viaduct to be built by the city of Hamilton of only nineteen feet above the top of the rails of said track or switch; it further appearing that the public highway at this point is not level, but on a grade and that it is impracticable if not impossible to construct the said bridge or viaduct so as to give a clearance of more than nineteen feet, and said commission having examined the place where said switch is to be placed under said bridge or viaduct and being fully advised in the premises, finds that it is impracticable to require the said Hamilton Clay Manufacturing Company or the city of Hamilton to raise said bridge or to lower said switch in such a manner as to give more than nineteen feet between the top of the rails of said switch and said bridge.

It further appearing to the commission that said switch will be used but locally and almost entirely for switching from the said manufacturing plant and that it will not unnecessarily injure the life or property of any person.

It is therefore ordered by the commission that the said Hamilton Clay Manufacturing Company and the Toledo, Peoria & Western Railway Company be, and they are hereby permitted to place said switch underneath said bridge as prayed for in the petition herein. The exact locality of said switch and the bridge under which the same shall cross is fully set out in a blue print or plat attached to said petition and made a part thereof and it is hereby referred to for certainty in the location of said bridge.

It is further ordered that the said Hamilton Clay Manufacturing Company and the Toledo, Peoria & Western Railway Company, or one of them, before operating said switch underneath said bridge, shall place east of said bridge about one hundred feet a telltale and west of said bridge about one hundred feet a telltale and continuously maintain the same while said switch is operated.

By order of the commission this 13th day of September, 1910.

ORVILLE F. BERRY, *Chairman.*

SPRINGFIELD BELT RAILWAY COMPANY

v.

CHICAGO & ALTON R. R. Co.

CINCINNATI, HAMILTON & DAYTON RY. Co.

CLEAR LAKE & ROCHESTER ELECTRIC RY. Co.

BALTIMORE & OHIO SOUTHWESTERN R. R. Co.

CHICAGO, PEORIA & ST. LOUIS RY. Co.

Appearances—For Springfield Belt, Messrs. Gillespie & Fitzgerald; for Chicago & Alton, Messrs. Jacobs & Patton; for Chicago, Peoria & St. Louis, Mr. P. B. Warren; for Cincinnati, Hamilton & Dayton and the Baltimore & Ohio Southwestern, Messrs. Graham & Graham; for Clear Lake & Rochester, Mr. Melick.

The petitioner, the Springfield Belt Railway Company, is a railway corporation organized under the general railway laws of the State of Illinois. It is undertaking to locate a line of belt railway on the outskirts of the city of Springfield connecting the various railway lines of said city with each other and forming a belt upon which to move freight from one of the said railways to another and connecting all of said railways with the various electric railway lines constituting the Illinois Traction System which enter the city of Springfield. A proper petition having been filed before this commission and acting upon said petition the said commission examined the several crossings referred to in said petition and a hearing upon the said petition and the answers thereto having been had and the commission having considered all of the evidence, arguments of counsel and being fully advised in the premises finds:

That it has jurisdiction of the subject matter of said proceeding and of all of the parties interested. That the petitioner is a railway corporation organized under the general railroad laws of the State of Illinois and designed to operate between the belt and main line for the purpose of handling freight. That the testimony shows that the operation of such a belt railroad from a practical standpoint can only be reasonably and effectively accomplished by the construction of its track as near as possible at grade with other railways with which it connects or over which it crosses; that track connection necessitates the construction at grade as near as practicable and that the petitioner expects to have and desires track connections with the various roads crossed by it; that the construction of the railway of the petitioner is for the purpose of handling freight for the reason that petitioner and affiliated lines are not permitted to operate freight cars through the city of Springfield.

That the petitioner will cross the main line of the Chicago & Alton Railroad Company and the Kansas City branch of the said Chicago & Alton Railroad at a point where the said branch and main line of the said Chicago & Alton Railroad Company are within a distance of two hundred feet of each other. The evidence shows that the operation of

trains upon both of said railways is very great and that the train movements on said lines would be seriously obstructed by the construction of the petitioner's railroad at grade across the same. That the Chicago, Peoria & St. Louis Railroad Company will be crossed by the track of the petitioner at a point within fifty feet of where the Chicago, Peoria & St. Louis Railroad Company crosses the right-of-way of the Chicago & Alton Railroad Company at grade, at which crossing point is located an interlocking device for the protection of said crossing; that at the point where the said Chicago, Peoria & St. Louis Railroad Company crosses the said Chicago & Alton Railroad Company it is feasible for the said Chicago, Peoria & St. Louis Railroad Company to ultimately depress its track so that it will go under the tracks of the Chicago & Alton Railroad Company; and until such separation of grades of the Chicago, Peoria & St. Louis Railroad Company and the Chicago & Alton Railroad Company it is feasible and reasonable for the petitioner to cross at grade the Chicago, Peoria & St. Louis Railroad at such point.

We further find that said Chicago, Peoria & St. Louis Railroad Company will be adequately and properly protected by including the crossing of the petitioner and the said Chicago, Peoria & St. Louis Railroad Company in the interlocking device now operated at that point. That the construction of crossing at grade across the said Chicago, Peoria & St. Louis Railroad Company will not seriously or unnecessarily interfere with the operation of trains upon the said Chicago, Peoria & St. Louis Railroad Company, nor endanger travel or transportation thereon.

That at the point where petitioner's railroad will cross the Baltimore & Ohio Southwestern Railroad Company there are located two public highways within a distance of two hundred feet; that the said Baltimore & Ohio Southwestern Railroad Company is a branch line and has but few train movements thereon each day; that the Baltimore & Ohio Southwestern Railroad Company though appearing at the hearing of this case when evidence was taken, but has not presented any brief or argument for a separation of grades; that the construction of grade crossing at this point is feasible and reasonable.

That a grade crossing at this point will not interfere with or unnecessarily impede or endanger travel or transportation upon the said Baltimore & Ohio Southwestern Railroad Company.

That the Cincinnati, Hamilton & Dayton Railroad Company at the point where the railroad of petitioner will cross it, is located within two hundred feet of the line of the Clear Lake & Rochester Electric Railway Company, an interurban railway doing only a small passenger business; that there are but few train movements each day upon the said Cincinnati, Hamilton & Dayton Railroad Company, which is not a main line but a branch line at this point; that though the Cincinnati, Hamilton & Dayton Railroad Company was represented at the hearing of this case when evidence was taken it has filed no brief, nor made any attempt to show that a grade crossing is not practicable. That a grade crossing is feasible and reasonable and will not unnecessarily interfere with or endanger travel or transportation upon said Cincinnati, Hamilton & Dayton Railroad Company.

That the Clear Lake & Rochester Electric Railway Company is a small electric railway operating but two cars and having in all but about twelve miles of lines; that the president of this company appeared before this body upon final hearing of this cause and stated that a crossing at grade between the line of petitioner and the line of said Clear Lake & Rochester Electric Railway Company was entirely reasonable and unobjectionable to his said road, and requested the commission to grant the petition of petitioner for a crossing at grade with his said railway; that a crossing at grade with said railway will not unnecessarily interfere with the travel or transportation upon the same, but is reasonable and feasible.

We further find that it is not feasible to permit the petitioner to construct a grade crossing across the main line of the Chicago & Alton Railroad Company and the Kansas City branch of the Chicago & Alton Railroad Company, but that petitioner should cross the said Chicago & Alton Railroad Company's main line and the Chicago & Kansas City branch of the said Chicago & Alton Railroad Company with an overhead crossing.

It is therefore ordered and decreed by the commission that the petitioner, the Springfield Belt Railway Company have leave, and it is hereby empowered, to cross with its tracks the main line and tracks of the Chicago, Peoria & St. Louis Railroad Company at grade and connect and unite its tracks with the same at the point set forth in the petition of the petitioner, and as shown and designated on the plat thereto attached showing said crossing; and

It is further ordered that the said crossing of the petitioner and the said Chicago, Peoria & St. Louis Railroad Company be protected by including the said crossing in the interlocking system now installed near this point for the purpose of protecting the said crossing and all necessary changes and additions made to said interlocking system for the purpose of properly protecting said crossing shall be paid for by the petitioner and the cost of maintaining said interlocking system at the crossing of the petitioner and the Chicago, Peoria & St. Louis Railroad Company shall be paid for by the petitioner, and the operating expenses of said interlocking system when so enlarged and installed shall be divided equally between the Chicago & Alton Railroad Company, the Chicago, Peoria & St. Louis Railroad Company and the petitioner.

It is further ordered that the petitioner, the Springfield Belt Railway Company, have leave, and it is hereby empowered and ordered, to cross with its tracks the track of the Cincinnati, Hamilton & Dayton Railroad Company at grade, and connect and unite its track with the track of such railway at a point described and set forth in the petition of the petitioner and as shown and designated on the plat thereto attached.

It is further ordered that the petitioner shall interlock the said crossing at the above named point by interlocking system in accordance with the requirements of this commission, and that the costs of construction and future maintenance shall be paid by the said petitioner; and

that the operating expenses of said crossing shall be divided between petitioner and the said Cincinnati, Hamilton & Dayton Railroad Company, each bearing one-half thereof.

It is further ordered and directed that the petitioner, the Springfield Belt Railway Company, have leave and is hereby empowered and ordered to cross with its track the track of the Clear Lake & Rochester Electric Railway Company at the point described in its petition and designated upon the plat attached thereto.

It is further ordered that the said petitioner shall construct at the said point of crossing for the protection of said crossing hand derails and that the cost of installment of said hand derails be paid for by the said petitioner.

It is further ordered that the petitioner, the Springfield Belt Railway Company, have leave, and it is hereby empowered and ordered, to cross with its track the track of the Baltimore & Ohio Southwestern Railroad Company at grade and connect and unite its tracks with the tracks of such railroad at a point described and set forth in the petition of the petitioner, and as shown and designated on the plat thereto attached.

It is further ordered that the petitioner shall interlock the said crossing at the above named point by interlocking system in accordance with the requirements of this commission and that the cost of construction and future maintenance shall be paid by the said petitioner, and that the operating expenses of said crossing shall be divided between petitioner and the said Baltimore & Ohio Southwestern Railroad Company, each bearing one-half thereof.

It is further ordered that the petitioner, the Springfield Belt Railway Company, shall have leave, and it is hereby empowered and ordered, to cross with its track the main line and track and the Kansas City branch of the Chicago & Alton Railroad Company by an overhead crossing at the point indicated in its petition to this commission and as indicated upon the plat attached thereto, and that the said overhead crossing shall be constructed in accordance with plans and specifications to be approved by this commission.

It is further ordered that the said petitioner, the Springfield Belt Railway Company, shall pay two-thirds of the cost of construction of said overhead crossing and the said Chicago & Alton Railroad Company shall pay one-third of the cost of construction of the said overhead crossing, and that the petitioner shall at its own expense, after the said overhead crossing is completed, maintain the same.

It is further ordered by the commission that after obtaining the right-of-way across said several railroads that the said petitioner proceed with all convenient speed to complete said crossings. That it prepare and submit to this commission for their approval plans and specifications for said overhead crossing and for said interlocking systems with all convenient speed and that said interlockers across said several roads herein mentioned be completed for operation within one year from the date of this order.

And it is further ordered by the commission that until such time as the said interlocker, as herein provided for, is placed in and upon said

crossing and approved by the said commission and in operation, that the trains on the several roads shall not cross said crossing without first having stopped their said engine or train immediately before passing over the said crossing.

And it is further ordered that the said petitioner, the Springfield Belt Railway Company, shall place over said crossing in a proper manner, and to be approved by this commission, a netting for suitable protection to prevent an accident on said crossing in case said trolley should be in any way disconnected at said crossing.

It is further ordered that the secretary of this commission prepare and submit to the said petitioner herein a bill for the expenses of said commission for the examination of said several crossings, to-wit: \$30.00 per crossing and that the said petitioner pay the same to this commission for the use of the State of Illinois with all convenient speed.

It is further ordered by the commission that they retain full and complete jurisdiction of the subject matter and of all the parties to this proceeding for the purpose of entering further orders from time to time, if occasion should require to do so, until said crossings are finally and fully completed as shown by a report by the said petitioner and approved by this commission.

Dated this 9th day of February, 1910.

ORVILLE F. BERRY, *Chairman;*

B. A. ECKHART, *Commissioner;*

J. A. WILLOUGHBY, *Commissioner.*

ST. LOUIS EAST SIDE BELT TERMINAL RAILWAY COMPANY

v.

SOUTHERN RAILWAY COMPANY.

In the above entitled cases motion was made by the respondent companies to dismiss the petition for want of jurisdiction, assigning several causes.

First—That the petitioner has received no right-of-way or authority from the city of East St. Louis, Ill., to construct its said proposed railway across and along said streets in the city of East St. Louis, Ill.

Second—That said petitioner has not obtained the right-of-way along Dallas st. in the city of East St. Louis to construct its said railway.

Third—That it has not secured the right-of-way along the public highway in said county of St. Clair, State of Illinois, to construct its said railway.

It is contended that the commission cannot act upon this petition unless it states it has the right-of-way and authority from the city of East St. Louis and from the public authorities along the public highway to construct such track.

Section one of an Act in relation to the crossing of one railroad by another and to prevent danger to life and property from grade crossings; in force July 1, 1907, reads as follows:

"That hereafter any railroad company desiring to cross with its track or tracks the main track of another railroad company shall, before constructing any such crossing, apply to the Railroad and Warehouse Commission for permission to make such crossing, and it shall thereupon be the duty of such commission to view the ground and give all parties interested an opportunity to be heard. After full investigation, and with due regard to safety of life and property, said commission shall give a decision prescribing the place where and the manner in which said crossing shall be made, but in all cases the compensation to be paid for property actually required for the crossing and all damages resulting therefrom shall be determined in the manner provided by law in case the parties fail to agree: *Provided*, That said commission shall only grant permission to construct such crossing at such place and in such manner as will not unnecessarily impede or endanger the travel or transportation upon the railroad to be crossed."

Under this section of the statute it is necessary that the petition allege that the petitioner is a railroad company, that it desires to cross with its track or tracks the main track of another railroad company and that it desires leave of the Railroad and Warehouse Commission to make such crossing and to examine the place of such crossing for the purpose of determining the place where and the manner such railroad shall cross such other railroad. The matter of obtaining the right-of-way by the railroad to pass along or over the streets of any city, village or town or across or along the public highway or across or over private property is left under that section, if the parties cannot agree, to be determined in the manner provided by law which would be a regular condemnation proceeding in court.

It appears to the commission that the first and most necessary thing to be determined in this matter is the place where and the manner in which the Railroad and Warehouse Commission will permit the petitioner to cross the defendant road or roads, and while the city can refuse to grant the franchise for the purpose of permitting the building or laying of the tracks of said railroad within the city it cannot give permission to the railroad to cross any other railroad even within the city in any other manner than is determined by the Railroad and Warehouse Commission. There is nothing in the section of the statute referred to, it seems to us, that requires the petitioner to state they have a franchise in any city, village or town for the purpose of building such railroad or constructing such crossing. If that were required it would be equally true that they should allege that they had the right-of-way across private property or along or across the public highway before the commission would have jurisdiction to grant such permission.

It was contended in the argument of the case that the commission should not act or make any order in relation to the crossings or require to perform any duty or cause any expense until it was certain that the petitioner had a right to build this said railroad. If that position is tenable

then the last thing to be done would be to make application to the Railroad and Warehouse Commission for permission to cross the several railroads within the right-of-way; then if the commission should refuse to permit them to cross at the point where they had secured the right-of-way or in the manner in which they had been granted such right, then all proceedings would be for naught and the entire matter would have to be gone over again. The commission having the ultimate absolute right to determine the manner and the place it would seem a better construction of the statute to require them to be first called upon to pass upon that subject. The commission in the ordinary practice acts upon the petition when filed by making their examination, hearing the cause, making their order, granting such right to cross and fixing the manner of such crossing including in such order and permit always that the right-of-way be obtained by the petitioner. After a careful consideration the commission hold that the petition is sufficient to authorize them to take jurisdiction of the case and hear it, and the motion to dismiss the petition is overruled.

By order of the commission this 28th day of September, 1910.

ORVILLE F. BERRY, *Chairman.*

The following is a decision of the Supreme Court of Illinois upon matters relating to the crossing at 157th st., Harvey, at which a subway crossing was ordered Jan. 18, 1906, but as yet has never been made. The decision will be found to sufficiently recount the history of the proceedings before the Railroad and Warehouse Commission prior to this decision, thus dispensing with any necessity for setting forth in this book the specific orders of the commission in regard thereto.

THE CHICAGO & SOUTHERN TRACTION COMPANY, APPELLANT,

v.

THE ILLINOIS CENTRAL RAILROAD COMPANY, APPELLEE.

"Opinion filed June 29, 1910. Petition stricken Oct. 11, 1910.

"Mr. Justice Cooke delivered the opinion of the court:

"This was an application to the Superior Court of Cook County by the Chicago & Southern Traction Company (hereinafter referred to as the traction company) for a writ of injunction to restrain the Illinois Central Railroad Company (hereinafter referred to as the railroad company) from tearing up and removing the railroad tracks of the traction company which are laid in 157th st., in the city of Harvey, at the point where said tracks cross the tracks of the railroad company. The cause was by stipulation of the parties heard by the court upon the bill, answer and documentary evidence, and thereafter a decree was entered by the court dismissing the bill for want of equity and adjudging the costs against the complainant. The traction company has prosecuted an appeal to this court.

"The facts, so far as material to a proper consideration of the question presented upon this appeal, are not in controversy. On and prior to Sept. 6, 1905, the main tracks of the railroad company crossed 157th st., in the city of Harvey. Those tracks had been laid at that point on the right-of-way of the railroad company long prior to the opening of the street by the city. On the date last mentioned the city council of the city of Harvey passed an ordinance granting to the traction company, for a specified period, permission and authority to construct, maintain and operate a street railway, to be operated by means of electricity or other motive power equal or better, along and upon certain streets within the city of Harvey, including 157th st. from Center av. to Halsted st., subject to certain conditions and provisions, among which were requirements that all tracks laid by the traction company should conform to the grade of the streets and should be laid under the direction and supervision of the board of local improvements of the city. The ordinance was approved by the mayor of the city and was accepted by the traction company on the day of its passage. Prior to the passage of this ordinance the traction company had been organized under the general Railroad Act of this State, with power to purchase, construct, maintain and operate its railroad between the city of Chicago and the city of Kankakee, in the State of Illinois. After the adoption and acceptance of the ordinance the traction company entered upon the construction of its railroad within the city of Harvey along the route specified in the ordinance. In order to complete its line in 157th st., in the city of Harvey, which was a part of its main line between Chicago and Kankakee, it became necessary to cross the main tracks and right-of-way of the railroad company above mentioned. Thereupon the traction company applied to the Railroad and Warehouse Commission for an order prescribing the manner in which the traction company should construct its crossing in 157th st. over the tracks of the railroad company. On Jan. 18, 1906, the commission rendered its decision, and entered an order in conformity therewith, directing that the manner in which the traction company should cross the tracks and right-of-way of the railroad company should be by means of a subway to be constructed by the traction company and the whole cost of which should be borne by the traction company. The commission also found that the railroad company was willing to permit the traction company to cross its tracks by means of a grade crossing temporarily and until Dec. 31, 1906, upon certain terms set forth in a contract between the two companies, and prescribed the manner in which such temporary grade crossing should be made, and ordered that if for any reason the traction company should not be able to complete the subway by Dec. 31, 1906, it might apply for an extension of time, which would be granted by the commission for good cause. On March 7, 1907, the traction company, having theretofore constructed its grade crossing over the tracks of the railroad company at 157th st. under the contract with the railroad company, but having failed to construct the subway, applied to the Railroad and Warehouse Commission for an extension of time within which to comply with the order of Jan. 18, 1906, which was granted,

the time being extended to Nov. 1, 1907. On July 9, 1908, the commission entered another order, reciting that it appeared that certain drainage ditches and other improvements were then in process of construction at the place where the subway was ordered and that it was impracticable at that time to construct the subway, and granting a further extension of time to July 1, 1909. On July 10, 1909, the traction company again applied to the commission for a further extension of time within which to comply with the order of Jan. 18, 1906. This application was denied and an order was entered finding that a grade crossing impeded and endangered the business and travel upon both roads, and further finding that the drainage ditches and other improvements in process of construction at the time of the entry of the order of July 9, 1908, were completed in the early fall of 1908, and had been effective in preventing the surface waters from overflowing the point where the crossing was ordered to be made, and that it was then, and had been for eight months, practicable to construct a subway in accordance with the former orders of the commission, but that the traction company had made no attempt to comply with the former orders and gave the commission no assurance that it intended in the near future to comply with the order of the commission in reference to the construction of the subway. After making these findings the commission revoked the permission given to the traction company by the order of Jan. 18, 1906, to temporarily cross at grade the tracks of the railroad company at 157th st., in the city of Harvey, and ordered the traction company to remove within thirty days, and thereafter cease to use, said grade crossing, or to thereafter cross the main tracks of the railroad company within the city of Harvey except by means of a subway constructed in the manner designated in the order of Jan. 18, 1906. On Aug. 17, 1909, the traction company filed its bill in this case for an injunction to restrain the railroad company from removing the tracks of the traction company at this crossing.

"Appellant relies upon two grounds for a reversal of the decree: First, that the act of May 27, 1889, in relation to the crossing of one railway by another and to prevent danger to life and property from grade crossings, is unconstitutional; and, second, that if the act is valid it does not give the Railroad and Warehouse Commission jurisdiction of crossings on streets within an incorporated city.

"A number of reasons are advanced in support of the contention that the act is unconstitutional. It is first urged that the Constitution, by section 4 of article 11, gives to cities and villages exclusive control of their streets in direct terms, and that any act which would in any way restrict an incorporated city in the control of its streets would be in direct conflict with that section of the Constitution and void. We do not think the section of the Constitution relied upon is susceptible of the construction given it by appellant. It does not give to cities and villages the exclusive control of their streets, but merely provides that the General Assembly shall pass no law granting the right to construct and operate a street railroad within any city, town or incorporated village without requiring the consent of the local authorities having

the control of the street or highway proposed to be occupied by such street railroad. This section does not, by implication, even attempt to divest the State of its paramount authority and control of the streets and highways. The authority vested in any incorporated city or village is there vested as an agency, only, the corporation itself being a mere creature of the State and existing only by authority of the Legislature and at all times under its paramount supervision and control. 'These municipal corporations are instrumentalities of the State, exercising such powers as are conferred upon them in the government of the municipality. Their power is measured by the legislative grant, and they can exercise such powers only as are expressly granted or are necessarily implied from the powers expressly conferred. The Legislature, representing the great body of the people of the State, when no private right is invaded or trust violated, may repeal the law creating them, or exercise such control in respect of the streets, alleys and public grounds within the municipalities of the State as it shall deem for the interest of the people of the State.' (Smith v. McDowell, 148 Ill., 51.) 'Cities, towns, etc., possess and can exercise only such authority and control in regard to their streets as may be delegated by the Legislature. They have no inherent power or authority in this respect and can act only in subordination to the paramount authority of the Legislature.' (City of Chicago v. Rumsey, 87 Ill., 348.)

"While a municipal corporation is vested with the control of the streets within its corporate limits, such control is not exclusive but is subject to the superior control which may be exercised by the State at any time. It cannot be said, however, that the act of 1889 in any measure takes from municipal corporations the right to control their streets. It does not vest the control of any streets in the Railroad and Warehouse Commission. Under its provisions the Railroad and Warehouse Commission is required, in proper cases, to designate the place where and the manner in which one railroad shall be allowed to cross the main line of another. If any city grants the right to a commercial railway to lay its tracks along one of its streets, as was done in this case, it does so subject to the right of the Railroad and Warehouse Commission to direct the manner in which such railway shall construct its crossing over any other railway whose main tracks had been previously laid across such street. The city of Harvey had the authority to refuse to allow appellant to lay its tracks along 157th st. unless the same should be laid at the street grade the entire length of that street, including the point of crossing the main line of appellee. To that extent it has the right to control its streets and the manner in which appellant shall lay its tracks therein. The right of appellant to so lay its tracks across the main line of appellee in case any objection should be made to a crossing at grade depended entirely upon the action of the Railroad and Warehouse Commission. Should the commission, upon investigation, find that the public safety required a separation of the grades of the two railroad companies, the city would be powerless to grant the right to appellant to cross the main line of appellee at grade. In making such finding the Railroad and Warehouse Commission, acting

as one of the agencies of the State, could not be said in any sense to be exercising any control over the street but would be simply designating the manner in which the crossing must be made. If the city of Harvey would permit no other crossing except one at grade to be made at this point by appellant over the main line of appellee, then the only alternative open to appellant, upon a holding of the Railroad and Warehouse Commission that a crossing at grade would not be permitted, would be to select some other point of crossing, whether it be upon some other street of the city of Harvey, with the consent of the municipality, or elsewhere.

"It is next contended that the act of 1889 is unconstitutional for the reason that the title and the act itself each embraces more than one subject. The title of the act is, 'An act in relation to the crossing of one railway by another, and to prevent danger to life and property from grade crossings.' That the act itself deals with but one subject and that the title embraces but one subject seems to us so clear as not to call for discussion or elaboration.

"It is also urged that the act is unconstitutional for the reason that it grants the senior road a special and exclusive privilege, immunity and franchise, in that it places the entire burden of constructing the crossing to be designated by the Railroad and Warehouse Commission upon the junior road. We do not perceive wherein this act can be classed as special legislation in this respect. 'If the law is general, and uniform in its operation upon all persons in like circumstances, it is general in a constitutional sense, but it must operate equally and uniformly upon all brought within the relation and circumstances for which it provides. On the other hand, if it is limited to a particular branch or designated portion of such persons it is special.' (Lippman v. People, 175 Ill., 101.) A law general in its character may extend only to particular classes and not be obnoxious to the provisions of the Constitution if all persons of the same class are treated alike under similar circumstances and conditions. (Lippman v. People, *supra*.) The act under consideration is general in its character although it relates only to a particular class. All railroad companies under this act are treated alike under similar circumstances and conditions, and the act cannot be said to be obnoxious to section 22 of article 4 of the Constitution. We are of the opinion that the act is not open to the criticisms made, but is constitutional.

"Appellant then contends that even though the act of 1889 is valid, it does not give the Railroad and Warehouse Commission jurisdiction over railroad crossings on streets in an incorporated city, for the reason that the act to provide for the incorporation of cities and villages gives jurisdiction over crossings, in direct terms, to the cities and villages. This phase of the question has been treated, in part, in the discussion of the constitutional questions raised. That section of the act referred to, being section 1 of article 5, does not give cities and villages the power to regulate the crossing of one railroad by another, but simply gives the power to control the location, grade and crossing of any railroad over the streets of cities and villages. The act in question here

contemplates that under the conditions prescribed the Railroad and Warehouse Commission shall take jurisdiction of the crossing of one railroad by another whenever and wherever it may be proposed to be made, whether within or without the limits of an incorporated city, village or town. There is nothing in our Constitution preventing the Legislature from delegating this power to the Railroad and Warehouse Commission, and there is nothing in this act which in any manner tends to confine the operations of the Railroad and Warehouse Commission to territory outside the limits of municipal corporations. No valid reason exists why any distinction should be made in this regard. The reason for giving the commission authority to control the manner of constructing crossings within municipal corporations is as well founded and potent as that giving it authority to control similar crossings without the limits of municipal corporations. The purpose of the act is, as expressed in its title, to prevent danger to life and property from grade crossings, and is a proper power to be exercised by the State.

"Appellant contends that for the purpose of this suit and for the purpose of being permitted to construct the crossing in question at grade it should be considered as a street railway only, and, relying upon the fact that the act of 1889 did not by express terms include street railways, insists that the Railroad and Warehouse Commission has no jurisdiction and that it is not bound by any finding made by the commission. The question as to the status of appellant was before this court in *Bradley Manf. Co. v. Chicago & Southern Traction Co.*, 229 Ill., 170, where it was specifically held that appellant was a commercial railway. The railway of appellant extends from the city of Chicago to the city of Kankakee. The mere fact that a portion of its main line is located on 157th st., in the city of Harvey, does not operate to make that portion a street railway. That portion of the road located in Harvey is a part of the whole system, and is as much subject to the laws regulating commercial railways as any other part or section of the road. Being a commercial railway it comes within the express terms of this statute, and appellant must have so regarded the situation at the time the controversy over the construction of this crossing arose, as it was the party which applied to the Railroad and Warehouse Commission to specify the manner in which the crossing should be constructed.

"We find no reversible error in the record, and the decree of the Superior Court is affirmed.

"Decree affirmed."

IN THE MATTER OF THE CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY PETITION FOR LIMITATION AND MODIFICATION OF THE ORDER OF THE COMMISSION OF DEC. 28, 1908, WHICH PETITION WAS FILED APRIL 22, 1909.

This application coming on for hearing and after examination of the same by the commission, the commission find that the petition of the said Chicago, Milwaukee and St. Paul Railway Company petitions the

commission to suspend the statute law of the State of Illinois in relation to crossings, and the commission being fully advised find that it has no power to grant the prayer of the petition, and that said petition is hereby dismissed.

By order of the commission this 20th day of October, 1910:

O. F. BERRY, *Chairman*.

IN RELATION TO THE PETITION OF THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY FOR PERMISSION TO CONSTRUCT A SECOND MAIN TRACK, AND JOIN AND UNITE SAME WITH ITS PRESENT MAIN TRACK NEAR THE VILLAGE OF LEDFORD, ILLINOIS.

The petitioner, the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, is a corporation owning and operating lines of railway in the State of Illinois, and owns and operates a line of railway from the city of Danville, county of Vermilion, in a southerly direction, through the village of Ledford, in the county of Saline, to the city of Cairo, county of Alexander, State of Illinois.

It appearing to the commission that the petition herein has been regularly filed in due time with the commission, and, that the commission has jurisdiction of the subject matter by virtue of the filing of said petition, and the commission having viewed the premises at the point of such junction as prayed for in said petition, and having examined same with regard to the safety of life and property, and the commission having heard the statements and arguments of counsel, and being fully advised in the premises; and it appearing that such junction at such point with the present main line of the said petitioner's road, will not unnecessarily impede or endanger the travel or transportation upon such railroad so joined by the petitioner at such point; and it appearing to the commission that on account of the necessity for increased facilities by the said petitioner to properly serve the public, said petitioner is required to construct a second main track at the said village of Ledford; it further appearing to the commission that it will be necessary to join and unite said second main track at the village of Ledford with its present main track; it further appearing to the commission that the heavy traffic of the petitioner upon its said line of railway is north of Ledford and from the coal district of Saline county and the oil district of Lawrence and Crawford counties; it further appearing to the commission that the petitioner's road is protected along this line by what is known as the telegraph block system; that trains under such system, are not permitted to be operated between blocks unless they are ascertained to be clear by the block operator before the train is permitted to enter the same; it appearing to the commission that under such system the danger of collisions and other accidents is very materially minimized by the close contact between the telegraph block operator and the train operatives; the commission being fully advised in the premises in view of the facts herein stated.

It is therefore ordered, adjudged and decreed by the commission that the prayer of the petitioner to construct the said second track and the said junction according to the plans shown by the annexed blue print marked Exhibit "A," and made a part of such petition, be and the same is hereby granted.

It is further ordered by the commission that when said junction is completed that the plans for such junction shall be submitted to the commission for their approval.

It is further ordered by the commission that the secretary thereof present to the petitioner bill for \$30.00 for the expenses of said commission in making such examination.

The commission reserves jurisdiction of the subject matter of this proceeding for the purpose of making any further order that may be necessary therein.

By order of the commission this 20th day of December, 1910.

ORVILLE F. BERRY, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

HART-WILLIAMS COAL COMPANY

V.

CHICAGO AND EASTERN ILLINOIS R. R. Co.

The petition herein alleges that the Hart-Williams Coal Company is a corporation duly organized under the laws of Illinois and authorized to do business in Illinois and that it has for several years last past and now is actively engaged in the mining and sale of coal; that its mine is located about one and one-quarter ($1\frac{1}{4}$) miles southeast of the city of Benton in Franklin county, Ill., with its main shaft lying on the east side of the Chicago and Eastern Illinois Railroad; that it has railroad connections with the Chicago and Eastern Illinois Railroad and the Illinois Central Railroad. It further alleges that the Chicago and Eastern Illinois Railroad and the Illinois Central Railroad cross each other at grade between the city of Benton and the property of the petitioner. The petition further states that the Wabash Southern Railroad Company owns a line of railroad extending from the city of St. Louis to Benton and with other connections being a part of the Missouri Pacific Railway System, and that the said Wabash Southern Railroad Company's track is builded and ballasted to Benton, Ill., from the city of St. Louis to within a few feet of the Chicago and Eastern Illinois Railroad track on the west side thereof. It further states that the present terminal of the said Wabash Southern Railroad, or Missouri Pacific System, is within one hundred (100) feet of the switch of the petitioner. It further alleges that all that now prevents the petitioner from using and connecting with said Wabash Southern Railroad is a crossing over the Chicago and Eastern Illinois Railroad Company's tracks. The peti-

tion further states that it has made application to the said Chicago and Eastern Illinois Railroad Company relating to said crossing and that said Chicago and Eastern Illinois Railroad Company refuse to consent or permit the petitioner to cross its said railroad.

The answer of the respondent company, the Chicago and Eastern Illinois Railroad, denies the right of the petitioner to have the relief prayed for and avers that the petitioner is organized under the general incorporation laws of the State of Illinois and not under the act relating to the organization and operation of railroad companies. The answer further denies that under and by virtue of the power granted to said petitioner under the general incorporation laws of this State any right of eminent domain, or of any right to make application under the law for such crossing under the act relating to the organization and operation of railroads. It denies the allegation in the petition that the land where said crossing is desired by the petitioner is owned by Walter W. Williams, but avers that it is owned by the respondent and asks that the case be dismissed for want of power in the petitioner to make such application and for want of jurisdiction of the commission to grant any relief under the pleadings and the admitted facts.

The first question presented for our determination is: Can the petitioner maintain this proceeding? If that is decided in the affirmative, the other questions solve themselves in a large measure. If decided in the negative then the other questions involved are not necessary to be passed upon.

It is contended that under section five (5), article thirteen (13) of the Constitution the petitioner is entitled to maintain this action. That part of section five (5), article thirteen (13) of the Constitution applying to this case reads:

"And all railroad companies shall permit connections to be made with their track so that any consignee and any public warehouse, coal bank or coal yard may be reached by the cars of said railroad."

It is not contended that under the general incorporation laws under which the petitioner is incorporated, unless by virtue of the above paragraph, the petitioner is entitled to maintain this action and cross the respondent's road.

Sections one (1) and two (2) of an act entitled, "An act in relation to the crossing of one railroad by another and to prevent danger to life and property from grade crossings," approved May 28, 1889, and in force July 1, 1889, reads as follows:

"Section one (1). That hereafter any railroad company desiring to cross with its track or tracks the main track of another railroad company shall, before constructing any such crossing, apply to the Railroad and Warehouse Commission for permission to make such crossing and it shall thereupon be the duty of such commission to view the grounds and give all parties interested an opportunity to be heard; after full investigation and with due regard to safety of life and property said commission shall give a decision prescribing the place where and the manner in which said crossing shall be made. But in all cases the com-

pensation to be paid for property actually required for the crossing and of damages resulting therefrom shall be determined in the manner provided by law, in case the parties fail to agree."

Section two (2) of said Act in part reads: "The railroad company seeking the crossing shall in all cases pay the costs and expenses of the commission incurred in the investigation, and if permission for a grade crossing is given shall bear the entire expense of the construction thereof."

Section twenty (20) of the General Railroad Act reads as follows:

"Every corporation formed under this Act shall, in addition to the power hereinbefore conferred, have power:

"*Sixth*—To cross, intersect, join and unite its railway with any other railway before constructed at any point in its route and upon the ground of such other railway company * * *." It further says: "And if the two corporations cannot agree upon the amount of compensation to be paid therefor, or the point and manner of such crossing and connections the same shall be ascertained and determined in manner prescribed by law."

There can be no question under the Constitution and the laws of this State but what a railroad company is compelled to allow connections with any coal company or coal bank in this State and this is not denied by the respondent company. The statute in relation to railroad crossings speaks only of railroads incorporated under the general railroad incorporation act of this State. We find no statute in this State giving any corporation, organized under the general incorporation laws, power to cross a railroad. It is evident from the sections referred to above that the Legislature intended to give the corporation desiring to cross the right of eminent domain which would be absolutely necessary before such crossing could be made.

Applying the above statutes to the facts in this case the commission hold that a private corporation incorporated under the general laws of this State cannot maintain an action to compel a crossing across a railroad company's tracks, the statute only referring to the crossing of one railroad by another railroad and for the further reason that it would be necessary for the petitioner to exercise the right of eminent domain should this commission grant the right to cross said railroad, and the commission are of the opinion that it doesn't have the right to exercise eminent domain. A company incorporated under the general incorporation acts of this State might have, under certain conditions, the right of eminent domain but it would have to appear, before such corporation would have such power, that the proceedings to condemn was by a corporation engaged in public service and that the proceedings of condemnation were for the purpose of acquiring property for public use; and the petitioner is a private corporation and its business a private business. The right of condemnation of land for their use would not, in our opinion, be for public use and within the meaning of the Constitution. The question whether or not such a corporation is public or private having been directly passed upon by our own Supreme Court in the case of *Millett v. The People*, 117 Ill., page 294. The plaintiff in that

case had been indicted as a weigher of a coal mine for failure to provide scales and weigh all coal taken out of the mine as a basis for computing the wages of miners as required by an act of the Legislature, approved June 14, 1883. It was urged by way of defense that the act was unconstitutional in this that it singled out owners of coal mines as a distinct class and imposed upon them burdens not imposed on other owners of property and employers of labor. To this it was replied, that the business of mining coal like that of railways, public warehouses, etc., was of a public character and that therefore the Legislature had the right for the protection of the public to adopt such special regulations as were deemed necessary for that purpose and that the act in question was nothing more than a reasonable exercise of that right. The question, therefore, it will be perceived was directly presented whether the use in the operation of a coal mine is a public one, and it was held that it was not.

That being true, the right of eminent domain could not be exercised. For the reasons above stated, or either of them, we are of the opinion that the proceedings in this case cannot be sustained and that the commission have no power to grant an order authorizing the petitioner to cross the respondent's road, and the petition will have to be dismissed.

By order of the commission. Dated at Springfield, Ill., this 16th day of February, 1911.

O. F. BERRY, *Chairman.*

PEKIN & PETERSBURG INTERURBAN RAILWAY COMPANY

V.

ILLINOIS CENTRAL RAILROAD COMPANY.

The petitioner, the Pekin & Petersburg Interurban Railway Company, a corporation organized and existing under the laws of the State of Illinois for the purpose of constructing a railroad in the city of Pekin, county of Tazewell, in the State of Illinois, petitions for permission to cross the tracks of the Illinois Central Railroad Company at grade on Derby st., in the city of Pekin, county of Tazewell, and State of Illinois.

It appearing to the commission that the petition herein has been regularly filed in due time with the secretary of this commission, and that due notice of the filing of the same has been given to the defendant as required by law, and that all of the parties in interest are properly before the commission, and that the commission has jurisdiction of the subject matter and all of the parties in interest.

And the commission having viewed the premises at the point of crossing in said Derby st., as shown by the petition, and examined the same with regard to safety of life and property, and the commission having heard the testimony and arguments of counsel and being fully advised in the premises, and it appearing that such crossing at such point will

not at the present time unnecessarily impede or endanger the travel or transportation upon said railroad so crossed by the petitioner at such point.

And it further appearing to the commission that in order to reach certain industries, and for the purpose of connecting said road up from different outside points, that there is a pressing need for such crossing at this time, and that it would materially delay the business of the company, and also the interests of the city of Pekin to require a subway or overhead crossing to be made prior to allowing the petitioner to cross said road and to open up its transportation lines, and the commission being fully advised;

It is therefore ordered, adjudged and decreed by the commission that the prayer of the petition be, and the same is hereby granted, subject to the conditions hereinafter named.

It is further ordered by the commission that the said Pekin & Petersburg Interurban Railway Company be, and the same is hereby authorized to cross the defendant road, namely, the Illinois Central Railroad Company, at grade, on said Derby st., at a point fully set forth and particularly described in the plat attached to said petition and filed herein, being a crossing of the defendant road in the city of Pekin, county of Tazewell and State of Illinois, having first acquired the right-of-way.

It is further ordered by the commission that the permission herein given shall only be temporary and shall not continue longer than two years from this date, and that during said period of time that the said petitioner is allowed to cross the right-of-way of the defendant road at grade, within one year from this date said petitioner shall prepare and submit to this commission plans and specifications for either a subway or overhead crossing at such point, and after the approval of such plans by this commission, said structure to be completed within two years from this date.

It is further ordered that at the expiration of two years from this date, if said petitioner has not properly provided a subway or overhead crossing that an order will be entered by this commission, to discontinue such crossing, said grade crossing being allowed for reasons indicated and only temporary, as above stated.

It is further ordered that the petitioner herein pay the entire expense of such crossing, and that crossing shall be made in such manner as shall be approved by the engineer of this commission, before such crossing is made or used.

It is further ordered that the secretary of this commission present to the petitioner a bill for \$30.00 to pay the expenses of this commission in making the examination of such crossing.

It is further ordered that this commission retain full and complete jurisdiction of the subject matter of this proceeding and of all the parties thereto, and that said order is made at the request and with the full knowledge and consent of the petitioner herein to fully and faithfully

abide by such order, and that in case the conditions herein named by the commission are not complied with within the two years, that the petitioner will without further notice, remove such grade crossing.

By order of the commission this 16th day of August, 1911, dated at Springfield, Illinois.

ORVILLE F. BERRY, *Chairman*;
B. A. ECKHART, *Commissioner*;
J. A. WILLOUGHBY, *Commissioner*.

WOODSTOCK & SYCAMORE TRACTION CO.

V.

CHICAGO, MILWAUKEE & ST. LOUIS RAILWAY CO.

The petitioner, the Woodstock & Sycamore Traction Company, is a railroad corporation, organized under the general railroad incorporation Act of the State of Illinois, and was incorporated for the purpose of building a line of interurban railroad from the city of Woodstock, in the county of McHenry, through the city of Marengo, in said county, and through the village of Genoa, and to the city of Sycamore, in the county of DeKalb, and State of Illinois; the motive power to be used by the said interurban railroad will be the overhead trolley system, or any other improved electric system, except the third rail system, as may be deemed best.

The petitioner asks leave to construct said railroad across two main tracks and one side track of the Chicago, Milwaukee & St. Paul Railway, at grade, on Sycamore st. in said village of Genoa, and at a distance of about one-half mile north of the tracks of the Illinois Central Railroad on same street, in said village of Genoa.

The respondent company files its answer to said petition in which it states that the construction and operation of the railroad of the said Woodstock & Sycamore Traction Company at said Sycamore st. crossing at grade would be dangerous to the operation of the respondent's road and to the traveling public on account of the nature and surroundings of said crossing.

The answer further alleges that the crossing at grade would necessarily impede and endanger the travel and transportation over the railroad of the respondent.

The answer of the respondent further states that there are other locations in said city of Genoa that are practical and feasible for the petitioner to cross the right-of-way and tracks of the respondent either above or below grade.

The answer further states that the respondent has no objection to the petitioner crossing its right-of-way on Sycamore st., or any other street, providing said crossing is above or under the grade line of said respondent company, on such terms and conditions as are reasonable and proper.

It appearing to the commission that the petition herein has been regularly filed in due time with the secretary of this commission and that due notice of the filing of the same has been given to the defendant as required by law, and that all parties appeared before the commission and presented their respective claims for and against said crossing, and the commission having full jurisdiction of the subject matter, as well as the parties thereto, and the commission having viewed the premises at the point of crossing, as shown by the petition, and examined the same with regard to safety of life and property, and as to whether or not such crossing would necessarily impede and endanger the travel and transportation over the railroad of the respondent, and having heard the testimony taken and presented by the respective parties, the arguments of counsel, and being fully advised in the premises, finds:

1. That the respondent road running through the village of Genoa, runs almost east and west and that the petitioner's road desiring to cross, runs substantially north and south.

2. That the respondent road running east as it approaches Genoa and for several thousand feet before it reaches the depot, is on about a two per cent up-grade, which is about one foot to every one hundred feet, and such grade extends west from the depot about three thousand feet.

3. That the track of the petitioner, at a distance of about four hundred feet south of the place of crossing petitioned for, is on a down-grade of $1 \frac{3}{10}$ per cent, and that the petitioner in approaching said crossing from the south would be running on a down-grade of $1 \frac{3}{10}$ per cent.

4. That the tracks desired to be crossed by the petitioner are the main line tracks of the respondent road, and that there are passing over said tracks a large number of trains each day, both freight and passenger, some of them heavily loaded and at a great speed.

5. That a heavy train going east, in order to ascend the grade approaching the depot of the respondent in Genoa, as shown by the testimony, must necessarily run rapidly prior to ascending such grade.

6. That if the commission should even order an interlocking plant for the protection of the respective parties at this point, a heavy train coming from the west approaching the depot, and compelled to stop on said grade to regard the interlocking signals, it would be very difficult, if possible, for them to start said train on said grade.

7. It also appears from the testimony and personal observation of the commission, that at said point of crossing, it is difficult to see approaching trains from several directions.

In view of these facts and others that appear in the record, the commission finds that a grade crossing at said point by the petitioner across the respondent road, would necessarily impede and endanger the travel and transportation over the railroad of said respondent, and that the operation of said petitioner's road across the road of the respondent at Sycamore street, would be dangerous to the public.

While the commission might desire for many reasons to permit this grade crossing, and there are many reasons why the commission would like to do it, yet the time has arrived in transportation matters, when it becomes the business and the duty of this commission, and all other

commissions having in charge the conservation of property and life, to deny grade crossings. It is admitted by all persons at all familiar with the facts that they are exceedingly dangerous to the traveling public, and when this commission is presented with a question of dollars and cents with danger to the public on one hand, and, on the other hand, their duty to the public to conserve life and property, the commission feels that it is its bounden duty to deny grade crossings, and it has been and is the policy of this commission to, as far as possible, eliminate grade crossings, and separate the grades of railroads at such crossings.

We believe in this case that it will be far better for the petitioner to separate the grade either by an overhead or subway crossing, than it would be to cross at grade and pay the necessary expense of the installation and maintenance of an interlocking plant.

Believing from the record, as the commission does, that to permit the prayer of this petition would not be in the interests of the traveling public, but that such crossing would endanger the life and property of the citizens of Genoa and vicinity, and others traveling on either of said roads on the trains over such crossing, the commission believes it is its bounden duty to the public to deny the prayer of such petition for a grade crossing.

Prayer of the petition denied.

It is ordered that the secretary of this commission present to the petitioner a bill in the sum of \$30.00 for the expense of the commission in making examination of such crossing.

By order of the commission this 10th day of November, 1911, dated at Springfield, Ill.

O. F. BERRY, *Chairman*;
B. A. ECKHART, *Commissioner*;
J. A. WILLOUGHBY, *Commissioner*.

RAILROAD AND WAREHOUSE COMMISSION
ON RELATION OF
COMMISSIONERS OF HIGHWAYS, BRIDGEPORT TOWNSHIP

V.

BALTIMORE & OHIO SOUTHWESTERN RAILROAD CO.

Complaint—Dangerous public highway crossing near Bridgeport, Ill., filed Nov. 27, 1911.

Appearances—For the complainants, James M. Groff, Attorney, Bridgeport, Ill.; for the defendant, B. A. Campbell, Attorney.

Case heard Dec. 12, 1911.

Findings of commission entered Jan. 23, 1912, as follows:

The complaint in this case states that the Baltimore & Ohio Southwestern Railroad Company crosses the public highway on the line of

sections numbers seven and eight, Bridgeport township, in the county of Lawrence and State of Illinois; that at said crossing there is a cut in said roadbed of about twenty-five feet where the public road crosses said railroad; that a person traveling upon the public highway cannot see an approaching train until it is very near the railroad track, and that said crossing is a dangerous crossing, and asks the commission to direct the Baltimore & Ohio Southwestern Railroad Company to put in an overhead crossing on said public highway across said railroad for the safety of the public, etc. The complaint further alleges that Bridgeport is a city of about 3,000 inhabitants, and that said crossing is one-half mile from the corporate limits of the city of Bridgeport.

The answer of the defendant railroad admits the crossing in the place stated in the complaint. Denies that there is any occasion for an overhead crossing at this particular point. Denies that the public highway is in a condition to admit of an overhead crossing over the tracks of the defendant without great expense, and the defendant also further answering, states that the commission has no jurisdiction in this proceeding under the law in this State; that the crossing referred to is outside of the corporate limits of any city, town or village, and that the commission, under the law, has no authority to require the defendant road to construct an overhead crossing at the place and in the manner desired by the complainant.

Several sections of the statute have been referred to by counsel for complainant as sustaining his views of the case. The Act of 1874 referring to fencing and operating of railroads has a number of sections that are referred to, one of which reads as follows:

"Hereafter at all of the railroad crossings of highways and streets in this State, the several railroad corporations in this State shall construct and maintain said crossings, and the approaches thereto, within their respective rights-of-way, so that at all times they shall be safe as to persons and property."

The next section referred to, provides:

"Whenever any railroad corporation shall neglect to construct and maintain any of its crossings and approaches, as provided in section 8 of this Act, it shall be the duty of the proper public authorities, having the charge of such highways or streets to notify, in writing, the nearest agent of said railroad corporation of the condition of said crossing or approaches, and direct the same to be constructed, altered or repaired in such manner as they shall deem necessary for the safety of persons or property."

Section 10 provides:

"If any railroad corporation of this State shall, after having been notified, as provided in section 9 of this Act, neglect or refuse to construct, alter or repair such crossing or approaches, within thirty days after such notice, then said public authorities shall forthwith cause such construction, alteration or repairs to be made."

It is evident that these sections do not apply to overhead crossings from the following language:

"Shall construct and maintain said crossings, and the approaches thereto, within their respective *rights-of-way*."

It would be impossible at this point, and at almost any point of crossing, to construct an overhead crossing within the right-of-way of the railroad, it being ordinarily not to exceed fifty feet on each side of the track. This language, "to construct and maintain said crossings, etc." means dirt crossings or any grading that may be necessary to properly approach and cross said right-of-way.

The subject of railroad crossings over public highways is a very important one, and one that the Legislature has not given as much attention, possibly, as it deserves. It is evident from the reading of the entire Act constituting and authorizing the Railroad and Warehouse Commission, that the commission has not been given the power to direct by peremptory order, an overhead crossing of a railroad by a public highway outside of the corporate limits of a city, town or village.

It is contended that certain sections of the statutes above referred to, require the railroad to build an overhead crossing. If it were admitted that this is true, the statute has provided how it may be done by the road authorities themselves, but in no wise authorizes the Railroad and Warehouse Commission to make any order in relation thereto. In fact if that is a proper construction of the statute (and upon that we pass no opinion), it is complete within itself.

The time has arrived when the State and its road authorities should give more attention to the crossings of public highways over railroads, and that railroads should also give more attention to this subject, and there should be coöperation between all parties interested in the safety of the traveling public, to construct as many overhead and subway crossings of railroads on the public highway as possible.

So far as we have been able to find, this is the first time the attention of the commission has been called to a matter of this kind. The complaint herein presents a meritorious demand and one worthy of consideration, of not only this commission but of the railroads as well, but the subject matter has not been sufficiently discussed in the past or considered of sufficient interest to bring about any legislation upon the subject in this State, and as we understand the law, after a careful examination thereof, we are of the opinion that the commission has no legal power or authority to make an order in this case of any character, and for this reason the complaint will have to be dismissed.

Complaint dismissed.

By order of the commission this 23d day of January, 1912, dated at Springfield, Ill.

O. F. BERRY, *Chairman*.

ILLINOIS BRICK COMPANY, CHICAGO, ILL.

V.

GRAND TRUNK WESTERN RAILWAY SYSTEM.

Petition to cross underneath tracks with two electric wires, near 123d st., Chicago, filed April 4, 1912.

Appearances—For the petitioner, E. C. Potter, Purchasing Agent; for the respondent, A. B. Atwater, Asst. to President.

Plan approved by Consulting Engineer of Commission.

Prayer of petition granted, and order entered April 24, 1912, as follows:

Now on this day comes the petitioner herein, the Illinois Brick Company and prays the commission for permission to cross under the main tracks of the Grand Trunk Western Railway Company with two electric wires, and it appearing to the commission that the said Illinois Brick Company has obtained the right-of-way and permission from said Grand Trunk Western Railway Company to cross their right-of-way and underneath their said tracks as prayed for, and

It further appearing that it is the intention of the said Illinois Brick Company to cross said tracks and right-of-way with two electric wires, properly insulated and laid in a conduit at a depth of about four feet underneath the two main tracks of the said Grand Trunk Western Railway Company, and the commission being fully advised;

It is therefore ordered, adjudged and decreed that the said petitioner, the Illinois Brick Company, be and the same is hereby permitted and authorized (the right-of-way having first been obtained from said Railway Company) to cross said Grand Trunk Western Railway Company underneath the tracks of said company at a depth of not less than four feet below the top of rail, in an easterly and westerly direction, parallel to and 720 feet more or less south from the south line of 123d st., located in the southwest quarter of section 25, township 37 north, range 13 east, of the 3d P. M., county of Cook and State of Illinois; full and particular detail of said proposed crossing is shown on the plat attached to the application herein and also to report of the engineer of this commission, and made a part of this order for reference.

It is further ordered that the said Illinois Brick Company pay all the necessary expense of said crossing and that said crossing be installed in a workmanlike manner, so that said wires may be safe and so that they do not interfere with the public travel at said crossing.

By order of the commission this 24th day of April, 1912, dated at Springfield, Illinois.

O. F. BERRY, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

MANUFACTURERS' JUNCTION RAILWAY CO.

EX PARTE.

Matter presented to commission in regard to certain clearances on this line which do not conform to rules of this commission.

At the direction of commission, inspection and report made by assistant engineer, and order of commission entered June 11, 1912, as follows:

Now, on this day comes the Manufacturers' Junction Railway Company and shows to the commission that they have along the line of their road at four distinct points the following clearances:

Near Ogden av. and Forty-sixth av., Hawthorne, they have a single track crossing under another of their tracks, with a clearance of 16 feet 10 inches.

About fifty feet east of the above mentioned crossing, this same track crosses under two tracks of the Belt Railway Company of Chicago, with a clearance of 17 feet 2 inches.

Near Forty-sixth av. and West Twenty-second st., Chicago, an elevated track of the Manufacturers' Junction Railway Company crosses two other tracks of the same railway; at one the clearance is 17 feet 6 inches and at the other the clearance is 18 feet 11 inches.

It further appearing that the rule of this commission is that the clearance for all overhead obstructions, bridges, etc., shall not be less than twenty-two feet, and it further appearing that said several clearances at such crossings have been carefully and thoroughly examined by the assistant engineer of this commission, and it further appearing from the report of said engineer that it is entirely impractical to make any change in said clearances on account of the topography of the country;

It further appears to the commission that these several clearances are also protected by whip guards across said railway a reasonable distance away from said clearances;

It further appearing to the commission that the service at these several points is entirely switch movements and thereby slow, and that the danger is minimum, and the commission being fully advised in the premises;

It is therefore ordered, adjudged and decreed that the said Manufacturers' Junction Railway Company, for the time being or until the further order of this commission, be permitted to use said clearances at the height indicated herein;

It further appearing to the commission that at the crossing at Twenty-sixth st. near Forty-sixth av., there is a power wire of the Western Electric Company crossing over the switch track of the Manufacturers' Junction Railway at a height of 24 feet 3 inches above the top of rail, and the rules of this commission requiring such clearances to be 25 feet;

It is therefore ordered, adjudged and decreed by the commission that the said Manufacturers' Junction Railway Company be, and the same is hereby, directed to raise said power wire to the height of 25 feet within ten days from the receipt of copy of this order.

By order of the commission this 11th day of June, 1912, dated at Springfield, Ill.

O. F. BERRY, *Chairman;*

B. A. ECKHART, *Commissioner;*

J. A. WILLOUGHBY, *Commissioner.*

EXTORTION---DISCRIMINATION ---RATES---SWITCHING.

JOSEPH TAYLOR

v.

THE OHIO & MISSISSIPPI RY. Co.

Appearances—For complainant, Wilderman & Hamill; for respondent, Ramsey, Maxwell & Ramsey, and Pollard & Werner.

OPINION BY PHILLIPS, *Commissioner*.

Complainant, Joseph Taylor, in 1888, opened a coal mine in St. Clair county, some twelve miles from East St. Louis, between the stations O'Fallon and Alma, and a distance of 2,800 feet north of the line of defendant's railroad. While the shaft was being sunk, Taylor applied to President Barnard, of the railway company, to put down a track from the railroad to his coal shaft, which the president declined to do. The negotiations were partly oral and partly by correspondence.

On July 11, President Barnard wrote Taylor:

"How do you propose to get the coal, provided the track is laid from your mine, to the tracks on the company's right of way? Have you counted upon the company being willing to make the delay and the extra run without charge, or do you propose to haul it by mules, or horses, or otherwise." Also, "With satisfactory assurance that a much increased business can be secured at such rates as we can get, or are willing to make, on coal, I shall be able to determine to what extent we can afford to put money into side tracks to so aid the development of your property."

On August 13, President Barnard again wrote Taylor:

"I have to advise you that this company will only undertake to put down such tracks as may be on its right-of-way. If you wish to reach your shaft, therefore, you had better make arrangements to procure rails, spikes, ties, etc., for the laying of the tracks yourself. Another thing to be considered will be the getting of cars to and from the mine, as

we can not afford, with the low rates that we get from Alma to St. Louis, to stop trains on the main line and run engines a half a mile from it to get loads and place empties."

And on November 13, Taylor wrote Barnard:

"In regard to grading, etc., and side tracks at my mine would say that the grading, etc., is about completed, and that I have several teams at work in order to have all in readiness. Wish you would rush the matter and have the material on hand at the time. Hope you will use every effort to have the rails, etc., on the ground without delay, as I am really anxious to have it done as soon as possible, as will soon be to the coal."

To this Barnard replied November 14, "I have your letter of the 13th inst., but can not understand what you mean. I told you when you were here I would have Mr. Stevens endeavor to find out what you could get rails for and let you know. I told you also where I thought you could buy. This company has not undertaken to procure material for your track, and not only that, I advised you about where you could get them yourself, and I think Mr. Stevens may have told you (I am not sure of this), where you could buy and at what price. I told you we would only lay the track necessary for the connection so much as run on the O. & M. right-of-way. You cannot have misunderstood this."

Taylor subsequently at his own expense built his track, with some advice and help from the company's engineer. The track thus built extends from the company's main track and at substantially a right angle therewith, a distance of 2,800 feet to the mine.

There was other correspondence and negotiations, but the above suffices to show the circumstance under which Mr. Taylor's track was built, and the connection made with the defendant's road.

About three miles east of Taylor's mine, and further from East St. Louis, are the Consumers' and Crowson's mines, both of which are situated practically upon the right-of-way of defendant, the switches and tracks leading to them being almost, if not entirely, upon the company's right-of-way. The principal point of the complaint is that defendant company charges from the Consumers' and Crowson's mines, 45 cents per ton freight for shipment of coal to East St. Louis, while from Taylor's mine it charges the same price, 45 cents per ton, and in addition thereto, \$1.00 per car as a switching charge for the service of placing empties and carrying loads from Taylor's mine to the main track, 2,800 feet. No switching charge is made in the case of shipments from the Consumers' and Crowson's mines. The facts are not disputed. The company concedes having made these switching charges on all of Taylor's shipments, and avows its purpose to continue them.

Complainant claims this extra dollar per car constitutes both an extortion and an unjust discrimination under the statute of this State; and the commission is asked to prosecute the defendant for the penalties denounced by the statute against these offenses.

So far as extortion is concerned, the case is not difficult. If the company may rightfully make a switching charge for the transportation of cars over Taylor's road, then the amount of \$1.00 per car, being

within the maximum switching charge fixed by the commission, cannot be said to be extortionate. The real question is whether the company may rightfully charge at all for this service. If it may not, that is to say, if for the present purpose the track laid by Taylor is to be regarded as part of defendant's road, and his mine is to be regarded as a station on that road, as contended, then the charge as to discrimination would seem to be made out.

We have examined the numerous Illinois decisions cited by complainant's counsel. Most of these arose under section 5, article XIII, of the constitution, which provides:

"All railroad companies receiving and transporting grain in bulk or otherwise, shall deliver the same to any consignee thereof, or any elevator or public warehouse to which it may be consigned, providing such consignee, or the elevator or public warehouse can be reached by any track owned, leased or used, or which can be used by such railroad companies; and all railroad companies shall permit connections to be made with their tracks, so that any such consignee and any public warehouse, coal bank or coal yard may be reached by the cars on said railroad."

Under the above provision, the Supreme Court holds (in language no more plain, it may be observed, than the constitution itself), that railroads are bound to deliver cars of grain at the particular warehouse or elevator to which they are consigned, if accessible by any track belonging to the company or which the company has the right to use.

Vincent v. C. & A. R. R., 49 Ill., 33;

People v. C. & A. R. R., 55 Ill., 95;

C. & N. W. Ry. Co. v. People, 56 Ill., 365;

Hoyr v. C., B. & Q., 93 Ill., 601.

And in such a case no extra switching charge for delivering cars of grain at an elevator reached by such track, can be made.

Vincent v. C. & A. R. R. Co., 49 Ill., 33.

But the company would not be bound to procure for that purpose from another company, or person, the right to use a track required for such delivery.

People v. C. & A. R. R. Co., 55 Ill., 95.

And, it seems, where the delivery would occasion great inconvenience to the company, it would be excused from such delivery, even though having a right to use the necessary tracks.

C. & N. W. Ry. Co. v. People, 56 Ill., 365.

All of these cases hold that any switch or track extending from a company's main track to any such elevator, whether such track is owned or leased by such company or not, if put there for the accommodation of the elevator, by some arrangement under which the road can use it is to be regarded as a part of the company's line for the purpose of the delivery of grain.

The foregoing cases, however, relate solely to the delivery of cars of grain, which is expressly enjoined by the constitution.

With regard to coal mines, the constitutional provision quoted above is, simply, that the company "shall permit connection to be made with their tracks," which it will be seen is essentially different in its terms from the provision in regard to grain deliveries.

In a late case it was held that a railroad company could not disconnect a switch which had been laid to a coal mine and which had for several years been used for making shipments of coal therefrom.

C. & A. R. R. Co. v. Suffern, 129 Ill., 274.

Commenting on the above constitutional provision in its relation to coal mine connections, the court says, in the Suffern case:

"It was the evident design of the constitutional provision above quoted to compel the railroads to furnish the coal mines in the State with all necessary facilities for the shipment and transportation of coal. As the railroad companies must deliver grain to all elevators upon the lines of their road, or connected therewith by side tracks, so also must they receive shipments of coal from all coal mines on the lines of their roads or connected therewith by side tracks."

The Suffern case was a petition for mandamus, and, as bearing upon the present inquiry, that case enlightens us no further than to show that Taylor has the undoubted right, under the foregoing clause of the constitution, to have his track and mine connected with defendant's road. The constitution commands defendant to "permit connection to be made" with Taylor's coal mine. This it has done. The constitution did not command defendant to build a track, extending 2,800 feet off from its own right-of-way, to reach this mine; and this it refused to do.

The connection has been made; and no question arises here, as in the Suffern case, as to any right of the company to sever such connection. It is not proposing to sever it. Nor does any question arise here as to the right of defendant to refuse to receive and transport coal from Taylor's mine. It has not so refused. What the company does refuse to do is, to take empty cars from the track to the mine, and loaded cars from the mine to the track, 2,800 feet, unless it is paid for that service extra, over and above the regular freight rate which obtains from the point of connection.

Undoubtedly, if Taylor would arrange to deliver his coal at the right-of-way he could avoid this charge, and would then have the right to have his coal transported at the regular rate of freight, and no more. The real question is, has he a right under the above quoted provision of the constitution, to compel defendant to operate his 2,800 feet of railway without compensation? It seems to the commission he has not that right. If he may compel defendant to operate his 2,800 feet of road gratis, may not someone else compel it to operate a road a mile, two miles, or five miles in length, gratis? Where will the line be drawn?

Does the declaration of the court in the Suffern case, that this constitutional injunction was intended "to compel the railroads to furnish the coal mines in the State with all necessary facilities for the shipment and transportation of coal" mean that the railroads are compelled to furnish those facilities gratuitously, long distances beyond their own switches and tracks, wherever the mine owner may build a track and

tender it? Does the further declaration of the court in that case, that railroad companies "must receive shipments of coal from all coal mines on the lines of their roads or connected therewith by side tracks" mean that such companies must receive such shipments at some distant point upon a track built by others, or does it mean only that the roads shall receive such shipments at their own respective rights-of-way on switches or in yards established for the purpose?

We think such a construction as is contended for, would extend the constitution far beyond the cases meant to be provided for by its framers.

We can well understand how a company might, by its own acts, or by contract, bind itself to perform such a service gratuitously. We can understand how, in many cases, railroad companies, for the sake of developing the coal fields along their rights of way, thereby enhancing their own trade and earnings, might enter into arrangements with coal operators, whereby they would be estopped to make switching charges, even in cases where the extra service might be larger than is here demanded of defendant. Doubtless some of the cases related in the testimony offered by complainant, as to the practice upon other roads in this same coal field, are of this character. But the fact, if it exists, that other roads have made such arrangements, furnishes no ground upon which to predicate a rule of law which will bind defendant. It may be, if it were shown that this same company was accustomed to perform a like service for other mine owners on its line, and competing in this field, without charging for it, that fact would furnish a basis for a prosecution for discrimination. But the other mines, whose shipments have been compared with complainant's for the purpose of making out the discrimination, are located immediately upon defendant's right-of-way. It performs no switching service for those companies, so far as the evidence discloses.

In the case of complainant, it can not with justice be claimed in the light of the evidence, as was claimed by the petition, that defendant either promised complainant, or by its acts induced him to believe that it would operate his track without charge. He was plainly told by letter, as he admits, and in conversation, as President Barnard testifies, that he must pay for this service, and that, too, before his track was laid, or any considerable work had been done upon his mine.

While we realize fully the disadvantage under which complainant labors in the present state of competition felt in the coal trade, we are not convinced that the law affords any remedy, and greatly fear that a prosecution for either extortion or discrimination would fail.

The petition will therefore be dismissed.

Springfield, Ill., Sept. 20, 1890.

UNION BREWING COMPANY, OF PEORIA

v.

THE CHICAGO, BURLINGTON & QUINCY R. R. CO.

OPINION BY PHILLIPS, *Commissioner*.

This is a complaint by the Union Brewing Co., a corporation, of Peoria, Ill., against the C., B. & Q. R. R. Co., alleging a refusal to switch cars.

Switching has been defined by the commission to be, "the hauling of loaded cars from the station yards, side tracks, elevators or warehouses to the junctions of other railroads when not billed from stations on its own road to said junctions, and from junctions of other railroads to the stations, side tracks, elevators and warehouses situated on the tracks owned or controlled by the railroad company doing said switching. In other words, switching is that transfer charge ordinarily made for moving loaded cars for short distances for which no regular way bill is made, and which do not move between two regularly established stations on the same road."

A particular car loaded with "cerealine" and billed to complainant, was transported to Peoria by the C., C., C. & St. L. Ry. Co., and was either by the carrying company, or an intervening company delivered to respondent, and marked for "Carson's track." Carson's track is a team track of respondent, one block from complainant's brewery, on which complainant was accustomed to receive its cars of freight. Respondent after receiving this car in fact switched it to Carson's track, not knowing it was for the complainant; but, upon learning whose car it was, the agent of respondent ordered it taken away; and it was then placed upon a team track of the P. & P. U. road, in a place considerably further from the brewery, and much less convenient for complainant, where it was finally unloaded.

Respondent declined to switch this car to Carson's track (or rather to leave it there after inadvertently switching it), and declines generally to switch any cars for complainant, because of a controversy arising between them as to the payment of certain car-service charges, levied through the Car Service Association of Peoria, for the detention of two cars which had been previously switched by respondent to Carson's track for complainant; which two cars last mentioned had not been unloaded by complainant within forty-eight hours after arrival, which is the time allowed free of charge by the rules of the Car Service Association.

The Car Service Association is composed of the several roads doing business in Peoria. Its object is to prevent the unreasonable detention of cars by consignees; and under its rules a charge of one dollar per day is made against any consignee for each day he fails to unload a car, after the expiration of forty-eight hours from the time such car is set by the railroad company in a proper place for unloading.

In the case of the two cars upon which the unpaid car-service charges were made, the brewing company claims that the railroad company was

at fault in failing to give notice of arrival. It also claims that the charge of one dollar per day is unreasonable in amount. The respondent, upon the other hand, claims it was not its duty to give complainant notice of the arrival of these cars, that being the duty of the company transporting them to Peoria, a duty which in this case respondent further insists was in fact performed by the C., C., C. & St. L. Ry. Co. Respondent further claims that the two cars named were placed in plain view of the brewery and only a block away, and that complainant in fact knew the cars were there in time to have unloaded them within the forty-eight hours, if its agents had seen fit; and it urges further that these car-service charges of one dollar per day for detaining cars are proper and reasonable, and that they are in the true interest of shippers, since they prevent the rolling stock of railroads from being tied up to the great disadvantage of those shippers who, for that reason, often can not get cars.

We thus state the controversy as to these car-service charges, not for the purpose of deciding it, but rather as a help to arrive at what we deem the real question before us. We content ourselves with the single observation that since the statute of this State (Sec. 5, Act "Receiving, Carrying and Delivering Grain,") provides that a consignee of grain transported in bulk "shall have twenty-four hours, free of expense, after actual notice of arrival, etc., in which to remove the same from the cars of such railroad corporation," there would seem to be an implied right under the statute to charge for a longer detention than the twenty-four hours which the statute names. Indeed, no reason is perceived in law or justice why an unreasonable and unnecessary detention of cars by consignees should not be paid for; and the Car Service Association seems from the proof before us to be only an agency established to keep account of claims so arising, and enforce them. The charges so made would have to be reasonable, under all the circumstances. The statute does not seem to refer the matter of fixing the maximum of such demurrage charges to this commission; and the question probably did not occur to the law makers. Car demurrage is an important subject, which has arisen, in a practical way, only within late years, and long after our statute for the regulation of railroads was passed. It does not, however, follow that, because there is no statutory regulation of the question, there is no law. The charge, as before observed, must be reasonable; and what is reasonable in a given case must depend upon the facts of that case, and be arrived at, if the parties can not themselves agree, by a judicial determination, in a court competent to try the question. Whether or not the seven dollar car-service or demurrage charge made for the detention of the two cars in question is reasonable, under all the circumstances, can only be determined authoritatively and judicially, when the parties carry the case into court. Not being a court for any such purpose, this commission can not determine it.

We do not even assume to decide that "cerealine" is "grain" within the meaning of the statute above cited. The nature of the article has not been very fully explained. It is a product of corn, the hull and germ being removed, and is used as a part substitute for malt. We have assumed it to be "grain" in the observations above made.

Respondent does not deny the refusal to switch cars, but expressly avows it; and the important question is, has the railroad company shown a state of facts which will excuse it from switching cars for complainant to Carson's track? In justification of its refusal the railroad company alleges two grounds, which may be stated in the language of its own answer, as follows:

1. "This company further states, that it does not do or hold itself open to do, a general switching business in the city of Peoria, but states that the service heretofore rendered to the said Union Brewing Co., in so switching these cars, was done for the accommodation of said Union Brewing Co., and are not such services as this company is compelled by law to perform."

2. "This company further denies that the railroad companies, centering in Peoria, and forming such association, have violated any law of the State of Illinois; and it asserts that the rules and regulations of said association are reasonable and lawful, and for the public good, and necessary for the protection of said railroad companies; and it further asserts that the charges herein complained of are just, reasonable and lawful, * * * and that in refusing to switch the cars of the said Union Brewing Co., shipped over foreign lines, until said just and reasonable charges, heretofore exacted, are paid, it has acted in accordance with the law."

The first ground stated seems to imply, that unless a railroad company holds itself out to do "a general switching business," it is under no legal obligation to switch cars. On this we observe that if respondent were confining itself strictly to handling only such cars at Peoria as it transports thither upon its own line, and if "Carson's track" were a track used by it exclusively for the accommodation of its patrons, who ship cars to Peoria over its own line, the case would stand on a basis entirely different from that presented by the evidence. Then the question would be presented whether or not the switching of cars from one point to another within the same city, for which no way bill is made, is a service by law demandable from a railway company which does not ordinarily do a switching business.

If this were in fact the case before us, we should hesitate before holding that a switching service can in no case be legally demanded of a railroad company unless such company does a general switching business. The principle upon which a distinction would be made, between the obligation to haul one mile, and the obligation to haul ten, is very difficult to perceive; and the interests of a patron might become as vitally involved in the one service as in the other. If one wishes a switching service only, and is willing to pay for it, why can he not command the service?

It is, however, unnecessary here to decide any such question. The evidence amply shows that the respondent is accustomed to switch cars at Peoria in case of shipments not originating on its own line. It has numerous patrons for whom it switches cars, turned over by other roads, and switches them, too, to the particular track known as "Carson's track." Receipted bills of respondent issued from its "Switching Department," showing the switching of seventy-one such cars at one dollar each, switch-

ing charge, have been filed by complainant in this case. Moreover the company did in fact switch the car in question, supposing it to be the car of another patron, but removed it upon learning it was for complainant. The fact that respondent does switching in the city of Peoria is really not denied. What is denied is that it does "a general switching business."

The question, therefore, is not whether a road which does no switching can by law be made to switch cars, but whether a road may switch for some, and refuse to switch for others; whether it may accommodate some patrons upon a convenient track and arbitrarily exclude others from the same privilege, making them go for their goods to another track less convenient.

We believe the position of respondent upon this question is wholly untenable. The principle of law is fundamental that railroads must treat all alike. They must accommodate all that apply in the order of their applications, extending favors to none, and excluding none from equal participation in the use of their facilities. They perform a public calling to be exercised impartially for every member of the public they were created to serve.

These principles have been so often and so universally held by all courts of the common law that we deem a citation of authorities unnecessary. Indeed, nothing could be more dangerous in practice than to allow the railroads which wield such powerful instrumentalities, on the use of which the welfare of every citizen more or less depends, to choose for themselves whom they will serve. Armed with such a power the railroads of the land could build up or destroy at will both private fortunes or communities.

We therefore are of opinion that since respondent switches cars at Peoria for some of its patrons it is under a legal obligation to switch impartially for all who apply, and who tender its reasonable charges. We hold, when respondent switched cars for complainant to Carson's track, it performed, not a mere "accommodation," but a legal duty.

The second ground alleged for refusal to perform this switching service remains to be considered; namely, the refusal of complainant to pay the charges for detention of the two former cars. As before remarked we can not decide this controversy. We are of opinion, however, that whether this particular charge be legally collectable or not, its non-payment can not justify a refusal to switch cars for complainant. When complainant demands of the Burlington Company a service such as it performs in Peoria for others, tendering it its reasonable charges, that company can not excuse itself from exercising its legal functions because of an unsettled controverted account, arising out of a wholly different transaction. If complainant owes it for unreasonably detaining cars, the courts are open to it. The account must there be ultimately settled. The railroad company can not, in our view, determine this question for itself, or hold its switching facilities in the city of Peoria as a mere "accommodation" by the optional use of which it can compel payment of a past disputed claim. This unsettled claim, it will be observed, is not for a switching service, but for another thing—the detention of cars. It

could not be known in advance that further car-service charges would accrue upon the cars respondent has been refusing to handle for complainant.

We are of opinion that respondent is not released from the legal duty of switching, by the failure of complainant to pay demurrage damages.

The only question now remaining concerns the remedy. The act creating this commission provides:

"Said commissioners shall examine into the condition and management, and all other matters concerning the business of railroads and warehouses in this State, so far as the same pertain to the relation of such roads and warehouses to the public, and to the accommodation and security of persons doing business therewith. * * * And whenever it shall come to their knowledge either upon complaint or otherwise, or they shall have reason to believe that any such law or laws have been, or are being violated, they shall prosecute, or cause to be prosecuted, all corporations or persons guilty of such violation."

In section 17 of the same act it is provided:

"It shall be the duty of the Attorney General and the State's attorney in every circuit or county, on the request of said commissioners, to institute and prosecute any and all suits and proceedings which they, or either of them, shall be directed by said commissioners to institute and prosecute for a violation of this act, or any law of this State concerning railroad companies or warehouses," etc.

Section 18 further provides as follows:

"All such prosecutions shall be in the name of the people of the State of Illinois, and all monies arising therefrom shall be paid into the State treasury by the sheriff or other officer collecting the same," etc.

The act upon "extortion and unjust discrimination" further provides that the commission shall enforce that act and "cause suits to be commenced and prosecuted against any railroad corporation which may violate the provisions of this act." It further provides in what counties of the State prosecutions may be begun, authorizes the commission to employ counsel "to assist the Attorney General," if they think it necessary, and says that no such suit shall be dismissed unless the commission and the Attorney General both consent thereto.

From the above provisions it seems evident that the "prosecutions" which it is incumbent upon this commission to institute and conduct are prosecutions for those penalties denounced by the statute against railroad companies for violation of the several provisions of the railroad and warehouse law. It was evidently not intended that the commission should carry on any man's private suit at public expense. A writ of mandamus to compel the switching of cars for complainant, while running in the name of the people, would, in fact, be the private suit of complainant. It would not be a "prosecution" in the sense that term is used in the statute. The statute fixes no fine or penalty for refusal to switch cars. The party damaged by such refusal could no doubt recover his damages; but this, too, would be his private action and not a public prosecution. The courts are open to complainant to prosecute its suit for itself. The intention to confine this commission to those prosecutions in the name of the people for penalties or the prosecution of such suits as

affect the public generally, or large communities of people, is also pointed to by the fact that the act concerning unjust discrimination expressly provides for private suit by the person discriminated against wherein he may recover treble damages and his attorney's fees.

Inasmuch as the parties had placed this case before us at some length, we have not hesitated, under the injunction of the statute that we shall "examine into the condition and management, and all other matters concerning the business of railroads and warehouses in this State," etc., to thus express our views of the law for the guidance of those who may be affected by them, or may have confidence to follow them; and we hope the matter may be now adjusted between the parties without resort to judicial determination of the question, which, not being a court in the proper sense, we are not authorized to make.

Springfield, Ill., Dec. 10, 1890.

LYON & SCOTT

V.

PEORIA & PEKIN UNION RY. CO. AND THE ILLINOIS CAR SERVICE ASSOCIATION OF PEORIA.

OPINION BY PHILLIPS, *Commissioner*.

This complaint raises practically the same questions which are discussed in the opinion of the commission in the complaint of the Union Brewing Co. v. The C., B. & Q. R. R. Co. and we need do little more than refer the parties to the ruling in that case. No evidence has been heard, but the conceded facts show that an unpaid car-service charge, concerning the justice of which there is a controversy, has been the principal cause of the refusal to switch cars. One matter is rather indirectly stated in the answer of the P. & P. U. Ry. Co., which might, if proved, take the case out of the principle. It is said the team track opposite blocks 6 and 7 where Lyon & Scott demand to have their coal cars placed is a "merchandise track," and that Lyon & Scott insist upon having their coal cars placed upon this merchandise track for unloading. It is not precisely averred that this track is held by the company exclusively for merchandise. We can understand how, under some circumstances, it might be highly proper for a company to establish one track for coal and another for merchandise, and if the coal track were suitable and proper for that commodity a coal merchant could not demand to have his coal cars put upon a track properly set apart for a different business. But the principle stated in the Union Brewing Co.'s case, that the railroad company must treat all alike would here apply with its entire force. Special favors could not be arbitrarily extended. If a suitable and proper track for coal cars is offered complainants where other coal merchants are accommodated, and the company is ready and willing to switch the cars there, then the refusal to pay the car-service charges would make no figure in the case. Respondent has in that case simply done its duty and is not in default.

The P. & P. U. states in its answer, that the delay in transporting the cars of coal which Lyon & Scott sets up as a reason for refusing to pay the car-service charges, (alleging that two or three days business was by the fault of the carrier thrown upon them at once), was not the fault of the P. & P. U. Company which only switched the cars, but was, if anybody's, the fault of the carrying company. If this can be established then it will show Lyon & Scott must look for their damages for delaying their cars to the company at fault, and that they can not set it off against a car-service charge of the P. & P. U. Company otherwise just and proper. But all this is matter for proof in a court of justice. As observed in the Union Brewing Co.'s case, we can not settle a controversy of this kind. The parties must have their rights adjudicated, if they can not agree between themselves.

Here, as in the case of the Union Brewing Company, the remedy, if one exists, must be sought by complainants in their own private suit in mandamus, or by a proceeding in chancery for a mandatory injunction. Springfield, Ill., Dec. 10, 1890.

J. H. LINNEMAN & Co.

v.

THE ILLINOIS CENTRAL R. R. Co.

OPINION BY PHILLIPS, *Commissioner*.

J. H. Linneman & Co., a firm doing business at Flanagan, Livingston county, Ill., complain that the Illinois Central R. R. Co., has discriminated against them in freight charges from Chicago, in that said railroad company has, it is claimed, charged complainants more for the same class and quantity of freight from Chicago to Flanagan, than was at the same time charged for the like freight from Chicago to Minonk, Minonk being the greater distance by about 13 miles, and the Minonk shipments passing through Flanagan on the same line of road.

Minonk is a competing point, being reached from Chicago by a line of the Santa Fé road, and by two lines of the Illinois Central. One Illinois Central line reaches Chicago from Minonk by way of Mendota, running in connection with the C., B. & Q.; while the other goes by way of Kankakee and is owned continuously to Chicago by the Illinois Central Company. The Kankakee line is the one on which the town of Flanagan is situated, between Chicago and Minonk.

The Santa Fé line which passes through Minonk, reaches in its farther southward progress Pekin and Peoria, where there is water competition, and it is insisted by respondent that such water competition has resulted in compelling the Santa Fé Company to fix a rate at Minonk which is unreasonably low, the Santa Fé being unable, under the law, to make a higher rate at Minonk than its through rate. Respondent, however, shows that while its rate to Flanagan from Chicago is in fact

slightly higher than to Minonk, it has not been the intention to ship any of the Minonk goods by the Kankakee line and through Flanagan; that if any such shipments were so sent, it was done inadvertently and against orders; and respondent wholly disclaims any purpose to violate the law by hauling, for less freight, a longer distance, in the same direction, over the same line.

While the proof is not specific or clear, we think it probable, that some of these shipments to Minonk were hauled through Flanagan; and this, if proved, would be a violation of the Illinois statute prohibiting unjust discrimination. Competition at a point is by our statute expressly excluded from the class of facts which our courts have said might be alleged to show a discrimination to be not "unjust." If there is competition at the end of the line, our statute gives all intermediate stations the benefit of it. In this our statute directly differs from the Interstate Commerce Act, which empowers the National Commission to allow a less charge for a greater distance where there is competition, if they deem it just and proper. This commission is without any such power. To haul a like quantity of freight to Minonk from Chicago for a less rate than to Flanagan, a less distance, over the same line of road in the same direction, is a violation of our statute.

We do not, however, think the public good requires that respondent be prosecuted for the penalty denounced by the statute. As we before said, the proof already produced is not clear, and better and more conclusive proof would need to be found before instituting suit. The statute being penal would be strictly construed. The exact case stated in the statute would have to be proved in order to recover the penalty. We are not satisfied from the proof produced that a prosecution would succeed under the construction given this act by our courts.

C., B. & Q. v. People, 77 Ill., 443;

Kankakee Coal Co. v. Illinois Central R. R. Co., 17 App., 614.

But even if specific proof were forthcoming, in view of the showing made that respondent's general freight agent had given orders to ship to Minonk only by the Mendota line, and in view of the further fact that respondent gives the commission positive assurance that care will be taken to observe the statute in future, it is decided to institute no suit for the penalty, unless there shall be future violations.

Complainants have filed with us a bill of many items for over-charges of freights by respondent, presumably with a view to our assisting in the collection of this private bill. This we cannot do. Our function is to prosecute for fines and penalties where we believe the public welfare demands it. The courts are open to complainants for the collection of such overcharges as they can prove. The statute concerning "Extortion and Unjust Discrimination" expressly provides (Sec. 6), that any private individual who may be damaged, through a violation of the statute, as to discrimination, may recover, in a civil suit, three times the amount of all his damages, together with his reasonable counsel fees to be taxed as costs. The remedy of complainants is thus made very ample for

their private injury, if they are able to show one; and this commission is not the proper forum for that part of this complaint which embraces this private claim for damages.

Springfield, Ill., Dec. 11, 1899.

COWLES & MCKEE

v.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY Co.

Appearances—For complainants, N. G. Iglehart; for respondent, Thos. S. Wright.

OPINION BY PHILLIPS, *Chairman*.

The object of this complaint is to correct alleged extortionate charges for the switching of cars in Chicago. It is alleged the defendant, in January, 1891, put into effect a switching tariff between junction points and the industries upon its line, by which the charge for switching loaded cars between 44th and 22d sts. was made four dollars per car, the distance being under three miles, thus exceeding the maximum switching charge for a three mile haul fixed by the commission. It is further alleged specifically that on May 2, 1891, car No. 6824 loaded with oats was delivered by the Atchison Company to defendant to be switched from 44th st. to complainants' elevator, located at 22d st., the distance being about 13,700 feet, which car respondent refused to switch unless four dollars were first paid for the service, and that a tender of two dollars, the maximum rate, was made to the local agent of respondent which he declined to receive, compelling complainants to pay four dollars.

The switching schedule referred to in the petition does on its face provide rates for switching in excess of the maximum rate fixed by the commission, which latter is two dollars per car for a distance not exceeding three miles. This maximum, fixed by the commission, is made by law *prima facie* a reasonable rate, and any company which charges more must assume the burden of showing in defense, when prosecuted for extortion, that the maximum fixed by the commission is unreasonable, and therefore not legal and binding. If a company can show this to the satisfaction of jury and court, it can defeat the commissioners' schedule. It must, however, be noted that no prosecution lies against a railroad company for the simple act of making an improper schedule, or a schedule higher than the maximum fixed by the commission. Only overt acts done, and specific charges demanded, or received, on actual shipments, can avail as evidence in a prosecution for extortion. We might, and no doubt would, admonish a company we saw preparing to make illegal charges, but could not prosecute before it had done the act.

Respondent, to the allegation concerning the issuing of this tariff, says, it was not intended to make a schedule in defiance of the commissioners' authority; and certain explanations are given in regard to objectionable portions of the schedule which will appear from the discussion further on.

The important and particular allegation of the complaint concerns car No. 6824 for the switching of which from 44th to 22d st. it is alleged four dollars was demanded, the distance being under three miles. This allegation, if proved, would ground a prosecution for extortion. Upon this allegation evidence was heard, and this evidence shows, conclusively, that while the expense bill was made upon this car as from the 44th st. yard of respondent, the car was in fact received by respondent at and transported by it from its 51st st. yard, which latter yard it is conceded is more than three miles from the complainants' warehouse. The car was taken to the yard at 51st st. by the Atchison engineer, as he himself testified without contradiction, and there delivered to respondent. But it is said, in passing to this yard, the car came upon a track of respondent at a point nearer than three miles to complainants' warehouse at 22d st.; and it is therefore insisted, that only the distance from such nearer point to the warehouse ought to be considered in determining the length of the haul. This latter position we will now examine.

It is contended that the establishment and operation of different yards by respondent in the city of Chicago as distributing points for different classes of freight and cars is a measure taken merely for the convenience of the company to enable it to handle its business more economically and efficiently, and that since it is possible for the company to deliver cars from the point on its track nearest the destination to which the car first comes, that point should be taken as the place from which to measure the length of the haul rather than the distributing yard to which the car may go in pursuance of the regulations of the company.

In this view of complainants we are unable to concur. It does not seem to the commission unreasonable that a railway company doing a large business in a large city should establish distributing points for the different classes of freight or cars which it hauls. Such an arrangement would indeed seem to be imperatively demanded by good railroad practice. It is shown that complainant handles daily in Chicago about 2,000 cars. Without a methodical system of transporting these cars it would be difficult, if not impossible for respondent to transact its business. Therefore, upon this point we must hold the contention of complainants and their counsel not to be sound.

If it were shown by the proof that a car was received by the company at a point nearer than three miles of its destination, and that such car was actually hauled by respondent direct to its destination, a distance of less than three miles, then the mere fact that the company may have a distributing point farther away to which the car might have gone, would not justify the company in charging for the longer distance from this distributing yard which was not in fact traversed; and if such a

charge were made, it would constitute, if above the fixed maximum, a *prima facie* case of extortion. Such a case was not made by the proofs under this complaint.

A large number of other switching bills were placed before the commission at the hearing, though not set forth in the complaint. Many of these, like the bill of Car No. 6824, purport to show a haul from 44th to 22d st.; others from 16th to 22d st., and perhaps others show hauls between other points, all less than three miles. The officers of respondent in explanation of these bills testified to facts tending to show the actual hauls made may have been, and probably were, different from those stated upon the face of the bills. It was shown the clerk who makes the bills for switching is liable not to know when he writes them where the car was transported from; that the regular course of business, as regard cars to be delivered to industries such as complainants' warehouse, would be, even though the cars were received at 16th or 44th st., to transfer them to the distributing yard at 51st st., from which they would be switched to the destination; and that the economical and proper management of respondent's business imperatively requires that this method should be pursued. The expense bills might therefore show 16th st., or 44th st., when in fact the initial point of the switching service was the yard at 51st st., and the billing clerk might use in the bill the name of the yard into which the car first came.

This testimony as to the course of business pursued by respondent is strongly corroborated by what we know took place in the case of car 6824 mentioned in the complaint. The service in switching this car was described in the expense bill as a haul from 44th to 22d st., but the car was in fact placed by the company bringing it to Chicago in respondent's 51st st. yard, and was there received, and from there switched by respondent.

The officers of respondent took the numerous bills of other cars presented and have made a statement to us regarding a small number of them which they were able to trace, showing that like car 6824 the actual haul was over three miles. Shipments shown by a large number of other bills, they report they were unable to trace.

We must not be understood to hold that a railway company may make arbitrary and oppressive arrangements with reference to the distribution and delivery of cars. In adopting methods of business the law would require that the convenience and accommodation of the public should form a chief object. Arrangements needlessly oppressive, having in view only increased revenue, neither justified by the company's necessity, nor required by the public good, would certainly be illegal. In the case before us we do not pass upon the propriety of respondent's distributing yards and methods in general. What we say is that a company may legally systematize its business; and there is nothing before us in this case which proves that respondent in doing so has acted oppressively.

Being satisfied that if all the facts before us were taken into court a prosecution for extortion would not be sustained, we are constrained to dismiss the complaint; but by this action it must not be understood we

recede from our established maximum rate for switching, or that we shall shrink from testing this rate by a prosecution, when a case shall be shown to have arisen under it.

The complaint will be dismissed.

Adopted by the commission, Oct. 7, 1891.

WM. H. KING & SON

V.

PITTSBURGH, FT. WAYNE & CHICAGO RY. CO.

The object of this complaint is to correct alleged extortionate charges for the switching of cars of wet glucose feed from the Sugar Refining Company's factory at the corner of Beach and Taylor sts., in the city of Chicago, to the tracks of the Chicago, Burlington & Quincy Railroad Company. It is alleged by the complainants that in the years 1892, 1893, and January of 1894, they shipped from Chicago, Ill., 61 cars of glucose feed to Chana, Ogle county, Ill., and 193 cars of such feed to Kings, Ogle county, Ill., both of which places are on the line of the Chicago, Burlington & Quincy Railway Company.

That all such feed was loaded into the cars of the respondent at the factory of the Chicago Sugar Refining Company, at the corner of Beach and Taylor sts., in the said city, and by the respondent switched to the tracks of the C., B. & Q. R. R. Co., and that the distance said cars were transported by the respondent was less than three miles; that the respondent wrongfully and unlawfully charged for such switching the sum of five dollars per car, and exacted and extorted from the said C., B. & Q. R. R. Co., and by it entered up as back charges, and charged to the complainants with the regular freight bills rendered by said C., B. & Q. R. R. Co. to the complainants, and the complainants thereby paid to the respondent said sum of five dollars per car for each of said cars above mentioned (as shown by freight bills filed in evidence), by paying the regular freight bills of said C., B. & Q. R. R. Co.; that the respondent thereby exacted and extorted from said complainants the sum of five dollars per car for such switching charges when it was only entitled, under the rules of the commission, to two dollars per car for such services.

The respondent avers in its answer to the complaint in substance as follows:

First—That the factory of said Sugar Refining Company is not situated on any track owned or controlled by the respondent.

Second—That the rate of \$5.00 per car charged on the switching in question is an average uniform rate fixed by the respondent for all switching between all points along the line of this respondent in the city of Chicago, and all other points on the lines of all other roads in said city, and embraces distances varying from a fraction of a mile to twelve miles.

Third—That all of the fifteen or more railroad companies having lines and terminal facilities in said city of Chicago on Jan. 1, 1892, adopted uniform rates per car for switching, embracing distances varying from a fraction of a mile to twelve or more miles, such uniform rates being the sum of \$3.50 to \$5.00 per car.

Fourth—That the charge of \$5.00 per car as set forth in the complaint includes the switching into and out of said yard all empty cars taken to said factory to be loaded and all empty cars taken away from said factory after being unloaded.

Fifth—That the merchandise with which said cars were loaded for transportation is of a perishable nature and therefore required immediate attention, whereby cost of switching was enhanced.

Sixth—That the rate of \$5.00 per car charged by respondent for switching said cars herein mentioned is not unreasonable or excessive under the circumstances of the case.

Seventh—That it is not desirable to have more than one switching charge for any line and that charge should include the longest distances as well as the shortest between switching points.

The rule of this commission, which complainants aver has been violated by the respondent, is as follows:

"The reasonable maximum rate for switching loaded cars for distances not exceeding three miles shall be \$2.00 per car."

The question before us is whether or not the defendant company has been guilty of a violation of this rule, which is based upon the power granted this commission by the statute authorizing them to establish reasonable rates, etc.

It appears to us quite conclusively from the preponderance of the evidence that some of the cars in question were hauled by the respondent not to exceed three miles. The number of the cars so hauled does not affect the merits of this case. If only one car was switched by respondent, and the distance was not exceeding three miles, and a charge of more than \$2.00 was made for this service, it is a violation of the rule above referred to.

The point urged by respondent, "that it did not take these cars from any point on any track owned or controlled by it," is not well taken, for the reason that respondent did this switching with a full knowledge of the switching charges as fixed by the commission, and also with a full knowledge of the fact that they were taking these cars from a point on a line of railroad not owned or controlled by it, and it is therefore estopped from claiming any advantage or general benefit thereby.

It is also true that respondent could not have been compelled to go to the Sugar Refining Company's works for these cars, as it was not located "on any tracks owned or controlled by respondents," but having elected to do so, it can not now plead in defense of its conduct that the cars were not taken from a point on track or tracks that was not owned or controlled by it.

If respondent in good faith had desired to avoid the violation of the rule of the commission which provides a maximum rate for switching cars, it could have done so by refusing to go upon the tracks of another

company to do this switching. Not having done so, the rule of law is that they intended to violate or ignore the rule of the commission fixing this switching charge.

The complainant, when he ordered the cars switched from the Sugar Refining Company's works, had a right to suppose that the Switching Company would conform to the rule of the Railroad and Warehouse Commission in such cases made and provided. If the distance these cars were switched did not exceed three miles, he had a right to expect to pay but \$2.00 per car for the service performed.

It is contended that the evidence does not show that the charge of \$5.00 for switching the cars in question was unreasonable. In the opinion of the commission this position is not tenable, for the reason that the maximum charge fixed by the commission is made by law *prima facie* a reasonable rate, and any railroad company which charges more must assume the burden of showing in defense, when prosecuted for extortion, that the maximum rate fixed by the commission is unreasonable.

In summing up this case, we have arrived at the following conclusion :

The evidence clearly shows that some of the cars in question were received by the defendant company, the Pittsburgh, Fort Wayne & Chicago Railway Company, at a point less than three miles from their destination, and that such cars were actually hauled by respondent direct to their destination, a distance of less than three miles, and that the respondent company has charged for such service the sum of \$5.00 per car, which is in excess of the rate established by this commission for such service, and that this constitutes a *prima facie* case of extortion.

Decided Dec. 5, 1894.

W. S. CANTRELL, *Chairman*.

MEXICAN AMOLE SOAP COMPANY

V.

PEORIA & PEKIN UNION; CHICAGO, BURLINGTON & QUINCY AND
CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANIES.

Appearances—For complainants, A. A. Brayshaw, President Mexican Amole Soap Company; for respondents, Hon. W. S. Horton for P. & P. U. and C., R. I. & P. and L. O. Goddard, W. F. Merrill and Hon. C. M. Dawes for the C., B. & Q. R. R. Co.

OPINION BY CANTRELL, *Chairman*.

On the 8th of October, 1894, the Mexican Amole Soap Company, of Peoria, Ill., complainants therein, had a car load of box lumber shipped from St. Paul, Minn., to Peoria, Ill., over the Chicago, Burlington & Quincy Railroad. On its arrival in Peoria the complainants were notified of the fact, and gave the C., B. & Q. R. R. Co. instructions to switch

the car over the tracks of the P. & P. U. Ry. to their factory, which is located in block 3 on the line of the free delivery or team tracks of the said P. & P. U. Ry.

Complainants were informed by the C., B. & Q. that the P. & P. U. Company would not accept the car. The president of the complainant then went to the Chicago, Rock Island & Pacific Railroad Company offices and saw Mr. Lord and Mr. Lintner of said company, the latter of whom is the agent there, and asked them to switch this car on to their tracks, which are also located convenient to complainant's factory, and are parallel with the P. & P. U. Company's tracks. The president of the complainant company was informed by said parties that they would like to accommodate him, but could not do so. He then told them that he was willing to pay whatever they charged for the service, but they still refused to switch the car. He then made application to the P. & P. U. Company to have this car placed on their tracks opposite complainant's factory in block 3, and it also refused, giving as a reason therefor that it had written instructions not to switch any cars from the C., B. & Q. tracks or any other line that was not in their Union. He replied that he was willing to pay whatever the charge was for said service, and they stated that they had no price and would not switch the car.

The tracks of the P. & P. U. and C., R. I. & P. R. R. Co.'s above referred to are known and designated as free delivery, team-or unloading tracks. There is no contention here that the P. & P. U. and C., R. I. & P. have ever refused to place on their respective free delivery tracks any cars coming to Peoria over their respective lines. The free delivery track of the C., B. & Q., where the car in question was delivered, is about four blocks from the factory of complainants. The evidence shows that there is an interchange of business between the C., B. & Q. and the C., R. I. & P. and the P. & P. U. companies in Peoria for points in that city for which a switching charge is made, but none of this interchange of business is handled on the free delivery tracks of either of said roads, and the switching that is done is to private or industry tracks. The evidence also shows that the Peoria railroads refuse to switch cars arriving at Peoria over lines other than their own to their respective free delivery or team tracks. They base their refusal to switch cars as above upon the ground that to do so would be furnishing terminal facilities for other roads.

The evidence shows in this case that the car in question was shipped over the Chicago, Burlington & Quincy R. R. from St. Paul to Peoria; that upon its arrival in Peoria the complainant was notified; that it requested the C., B. & Q. agent to have it switched to a point opposite its factory on the P. & P. U. or C., R. I. & P. R. R. Companies' tracks; that application was made to each of these roads and was refused; that the factory of complainant is located on the team or free delivery tracks of the Peoria & Pekin Union Ry.; that the tracks of the Chicago, Rock Island & Pacific Railroad Company at or near complainant's factory are also free delivery tracks.

It is very evident that the only object complainants had in desiring this car switched was its own convenience and to save the expense of unloading by wagon and hauling to its factory. The C., B. & Q. "team tracks," where this car was placed, are about four blocks from com-

plainant's factory, and while there is no doubt that either the P. & P. U. or C., R. I. & P. "team tracks" are nearer the factory than the "team tracks" of the C., B. & Q., yet we do not think this a sufficient reason why either the P. & P. U. or C., R. I. & P. should be compelled to switch this car to their free general delivery or team tracks,—to hold that they should, do so would in effect hold that one railroad company can be compelled under the law to furnish terminal facilities for another, which we do not believe to be just or equitable.

"Team or free delivery tracks" are tracks that are built, maintained and used by railroad companies for loading and unloading freight shipped over their lines for the accommodation of their own patrons. Each railroad company is required to furnish its patrons with reasonable terminal facilities, in which are included tracks for loading and unloading by wagon.

We have examined the evidence in this case carefully, and are of the opinion that the real question in this case is not whether one railroad company can be compelled to switch cars for another, but rather, "can one railroad company be compelled to furnish terminal facilities for another?" We are of the opinion that it can not, but that each railroad company must under the law furnish its own terminal facilities for its own patrons.

For the reasons above stated the complaint is hereby dismissed.

Decided Feb. 1, 1895.

JAMES BROWN, OF DWIGHT, ILL.

v.

CHICAGO & ALTON RAILROAD COMPANY.

Appearances—For petitioner, Peck, Miller & Starr; for respondent, Hon. Wm. Brown, General Solicitor.

OPINION BY W. S. CANTRELL, *Chairman*.

This is a complaint filed by Charles A. Mallory, as the representative of James Brown, a stock dealer of Dwight, Ill., charging the Chicago & Alton Railroad Company with extortion, in this, that the respondent charged the complainant the sum of two dollars as a terminal charge, in addition to the amount it was allowed to charge under the schedule of rates fixed by the Railroad and Warehouse Commission, on a car of hogs shipped by the said Brown on said railroad on Sept. 5, 1894, from Dwight, Ill., a station on the line of the Chicago & Alton Railroad, to Mallory, Sons & Zimmerman, live stock commission merchants, at the Union Stock Yards, in the city of Chicago.

There is little controversy as to the main facts in this case. The main and important question involved in the contention, to-wit: the "two

dollars terminal" charge being admitted by respondent in its answer to the complaint, but there is a most serious contention as to the right, under the law, to make this charge.

A case very similar was decided by Judge Grosscup in the United States Circuit Court for the Northern District of Illinois, on the 26th day of November, 1894, in the matter of the Union Trust Company of New York v. Atchison, Topeka & Santa Fé Railroad Company, in which Judge Grosscup held that the two dollars terminal charge imposed by the Atchison, Topeka & Santa Fé Company was illegal, and entered an order that the "Receiver should discontinue the levying of the additional charge," etc. This case is now pending in the United States Circuit Court of Appeals.

It is insisted by counsel for complainants that the case before the commission is on all fours with the Santa Fé case, while counsel for respondent does not admit that the decision of Judge Grosscup is decisive of this case. If there was nothing for the commission to pass on but this question, it would not give us much concern, but we are asked to lay down a precedent which will affect every railroad that brings live stock into Chicago. We are asked by counsel for complainant to hold that this terminal charge of two dollars per car is illegal and extortionate, and that it is a discrimination against the live stock interests of Chicago. And while the respondent only answers for itself, yet an order holding it liable in this case would have the effect to hold that all railroads delivering stock to the Union Stock Yards in the city of Chicago are also violating the law, because they all have been making this terminal charge since June 1, 1894. Prior to June 1, 1894, no charge was made for this extra service, because no charge was exacted by the Union Stock Yards and Transit Company for the use of its tracks, but when the Union Stock Yards and Transit Company imposed upon the railroads using their tracks a charge of 40 cents per car each way, then the railroad companies added this charge of two dollars per car, and called it in some instances a "terminal charge" and in others "switching charge." In the case now before us on the statement of billing it is called a "terminal charge," while in the argument of counsel for respondent he is pleased to call it a "switching charge."

The evidence shows the respondent has the license or right by contract to use the tracks of the Unions Stock Yards and Transit Company for the purpose of delivering stock at the Union Stock Yards, and returning to their own tracks, but no authority is shown by respondent by which it is authorized to use these tracks for switching purposes. It has been the custom of respondents for many years when stock was shipped over its line to Chicago to deliver it at the Union Stock Yards, and we feel warranted in saying it has been its universal practice to deliver it there; that it has done so without any directions from the shipper other than to have the agent of respondent bill it to Chicago.

The evidence also shows that respondent maintains an office at the Stock Yards; that it has agents, telegraph operators, and other employés necessary to properly conduct their live stock business at that point; that chutes and pens known and designated as the "Alton chutes" are

set apart for it by the Stock Yards Company; that it delivers stock there with its own engine and crew, and that the Union Stock Yards and Transit Company have nothing whatever to do with the handling of cars of stock delivered at the Stock Yards. To all intents and purposes, therefore, the tracks of the Union Stock Yards and Transit Company, when being used by respondent within the scope of its license or authority, is as much a part of its road as any part of its main line. With this view of the case the question of delivery beyond respondent's line, and the right to make an additional charge for such service does not enter into this case.

Let us assume that the terminus of respondent's road was at a point $2\frac{3}{4}$ miles from the city limits of Chicago, but that it had a depot or station inside the city limits, within 3 miles from its terminus, which it reached by running its trains over the tracks of another company. It accepts for shipment a carload of merchandise at East St. Louis to be delivered at Chicago, for which it charges the maximum rate allowed by law to Chicago. Will it be insisted that under such circumstances an additional charge of two dollars or any other sum could be legally made because of the fact that the last $2\frac{3}{4}$ or 3 miles haul was made by the respondent over tracks that did not belong to it, or which was beyond their terminus, and for the use of which they had to pay trackage? We apprehend not. But, says the learned counsel for respondent, to perform this service from Brighton Park to the Stock Yards we are required to pay for the use of the tracks in going and returning from the yards. That is true, yet isn't it equally true in the illustration we have given that you would also have to pay for the use of the tracks in getting to and from your depot inside the city limits? It makes no difference so far as it affects the right to make the two dollars charge what amount respondent is required to pay for the use of its tracks to enable it to discharge its duty to the public. Its undertaking was to deliver the shipments in question at the Union Yards; its duty was to deliver it there. The complainant, Brown, understood, as he had a right to understand from the long established custom of respondent's, that it would be delivered there. It was in fact delivered there. The service rendered was but a single service as much as a delivery from station to station on its main line, for which the respondent had the right to charge the maximum rate allowed by the law for the distance this car was actually hauled by it and no more.

The fact that the complainant agreed by express contract to pay an additional sum of two dollars as a switching charge, and did pay it through his representative, is no excuse nor defense. It was not within the power of the respondent by contract, agreement or otherwise to burden the complainant with charges for services it was bound to render without any other compensation than the legal charges for transportation, and such contract is illegal and void.

The distance from Dwight, the point of shipment, to Chicago, as shown by respondent's official time table is 73.6 miles. The distance from Dwight to Brighton Park, the junction of respondent and the Stock Yards tracks, and the point where this shipment left the

tracks of the respondent, is 68.5 miles. The distance from the junction of respondent at Brighton Park to the Stock Yards, where the car of hogs was unloaded, is $13\frac{1}{4}$ miles. Therefore, the actual distance respondent hauled this stock was $70\frac{1}{4}$ miles. The maximum allowed respondent for this service, if there was no terminal charges, would be \$19.55 or \$1.15 per thousand pounds, while the amount actually charged, exclusive of terminal charges, was \$20.06, or \$1.80 per thousand on a basis of 75 miles haul. While this is *prima facie* a violation of the statute, yet we do not believe it was intentional, but rather an error of the agent at Dwight who made the billing, and we do not feel inclined to hold the respondent liable for it. If, however, we believed that this over-charge was made with the intention to disregard the rate fixed by the commission, we should not hesitate to invoke the machinery of the law and prosecute the respondent for it, however trifling the amount involved may be.

The evidence of the general manager of respondent, Mr. C. A. Chappell, shows, that the respondent has a piece of ground 100 feet wide by 200 feet long situated on their right-of-way between Joseph and Mary sts. in the city of Chicago, that it is fenced; that there is a platform there; that the yards will hold about ten cars of stock; that this enclosure has been there a good many years, probably ten years; but there are no employés of the road there; no food for live stock there; no water there; that there has been no delivery of live stock there for two or three years; that these pens were put there for the accommodation of packing houses that were located near there, but that some two or three years ago these packing houses, or a great many of them, moved away, and no live stock has been delivered there since; that these yards would not take care of their daily receipts; that the custom of respondent is, when live stock is consigned to Chicago, to deliver it to the Union Stock Yards, and that this was its practice prior to and since June 1, 1894; that no change in the action of live stock shippers had anything to do with the imposition of the terminal charge of two dollars.

The evidence further shows that respondent has delivered at the Union Stock Yards, from 1889 to 1894, inclusive, 131,039 cars of live stock, on an average of about 60 cars per day, Sundays included. In the light of this evidence will it be seriously contended that the facilities at Joseph and Mary sts. are either ample, suitable or sufficient to accommodate the daily receipts of live stock shipped on respondent's road to Chicago? We do not think so. As said by Judge Grosscup: "The fact that the defendant may have some place on its line of road in Chicago where stock could be delivered is not absolutely controlling. The understanding of the carrier's undertaking is derived from what the carrier commonly does. To circumvent that understanding by a pretense of maintaining yards where they are not used might be worse than boldly disregarding the law itself."

The universality of delivery at a certain place may be the very thing that constitutes that place the company's depot.

If the practice of the carrier is of such a character that the public is reasonably led to understand a certain place to be the company's depot, the carrier should be held to that understanding. Terminal charges are allowed in particular cases where the delivery is to be somewhere else than at the carrier's depot, but that does not allow the carrier to establish its depot at some place off its line and then add terminal charges.

The same may be said with reference to switching charges. There is no more reason or right for adding an additional sum for "switching charges," under the facts of this case, than there is for making the "terminal charges." Therefore, with our view of the law, it makes no difference in this case whether the two dollar charge is called a terminal or switching charge. Either is unwarranted and illegal. It is the duty of the carrier, as said in the Covington Stock Yards case, 139 U. S., 128, to furnish facilities for loading, carrying and unloading live stock, and its obligation is not discharged until the shipper is furnished with proper facilities to unload. The carriage includes the delivery, and there can be no delivery except at such place as is suitable to the delivery of the particular thing carried." A delivery of live stock unattended with suitable chutes, yards, etc., would be no delivery at all.

There is no question in the minds of the commission that the stock pens at Joseph and Mary sts. have long since been abandoned, and that the respondent has adopted the Union Stock Yards as its Chicago depot for delivering live stock, and that it has no other facilities ample, suitable or sufficient in the city of Chicago for that purpose.

We have carefully examined and considered the authorities cited by counsel as well as many other cases not cited. We have given the evidence such weight as it is entitled to, and have given the case that degree of consideration which its importance demands; and we have arrived at the following conclusions:

That the respondent is not entitled, under the laws and facts in this case, to charge any sum whatever in addition to the regular tariff rate on this shipment.

We therefore find that the allegation of complainant's, in so far as it charges the respondent with extortion as to the terminal or switching charge, is true.

That the additional charge of two dollars made by respondent in this case, whether it be called a terminal or a switching charge, is a violation of the statute, that this charge is extortionate, and is therefore illegal and void.

We further find that the Union Stock Yards in the city of Chicago has become by usage the Chicago depot or station of respondent for the delivery of live stock, and that the respondent has no other facilities, ample, suitable or sufficient, in the city of Chicago that will accommodate the daily receipts of live stock that are shipped over respondent's road.

We further find that the service rendered in this case is but a single service for which the respondent is allowed to make but a single charge, and that charge should not exceed the maximum tariff rate as fixed by the commission, for the actual distance the shipment was hauled by respondent.

It is therefore ordered by the commission, that the respondent, the Chicago & Alton Railroad Company, be and they are hereby found guilty of extortion in this, that they charged, collected and received from the complainant, James Brown, the sum of two (2) dollars as a terminal or switching charge, in addition to the amount it was allowed to charge under the schedule of rates fixed by this commission, on a car of hogs shipped by the said Brown on said railroad on Sept. 5, 1894, from Dwight, Ill., a station on the line of the Chicago & Alton Railroad, to Mallory Sons & Zimmerman, live stock commission merchants, at the Union Stock Yards in the city of Chicago, State of Illinois.

And it is further ordered by the commission that the Attorney General be, and he is hereby, requested to prosecute the said Chicago & Alton Railroad Company for said extortion as provided by statute.

Adopted Oct. 15, A. D. 1895.

W. S. CANTRELL, *Chairman*;
THOMAS GAHAN, *Commissioner*;
GEO. W. FITHIAN, *Commissioner*.

O. L. BRINING, OF LeROY, ILLINOIS

v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILROAD COMPANY.

Appearances—For petitioner, O. L. Brining; for respondent, Hon. H. J. Hamlin, of Counsel.

GEORGE W. FITHIAN, *Commissioner*.

This is a complaint by O. L. Brining, of LeRoy, Ill., against the C., C., C. & St. L. R. R. Co., alleging a refusal to switch a car of coal at LeRoy, Ill.

The proof in this case shows that the complainant purchased a car of coal and had it shipped to him over the Illinois Central Railroad to LeRoy. While the car was in transit the complainant sold it to Cleary & Payne, to be delivered at their place of business, located on a switch of the C., C., C. & St. L. R. R. Co., at LeRoy, Ill. The car was delivered by the Illinois Central R. R. Co. to complainant at LeRoy, and then placed on the "Y" or transfer track, which was a common track used by the trains of both the Illinois Central and the C., C., C. & St. L. Railroad Companies. After the car was placed on the track the complainant tendered the agent of the C., C., C. & St. L. R. R. Co. \$2.00, which is the maximum switching charge fixed by this commission, and requested him to have the car switched to Cleary & Payne at their place of business. The agent of respondent refused to switch the car, stating that the proper officers had told him not to switch it, and that he had been instructed to refuse to switch cars to industries on the Big Four which came in over the Illinois Central.

Rule 21 of this commission fixes the maximum rate for switching loaded cars for distances not exceeding three miles at \$2.00 per car, and defines switching to be "the hauling of loaded cars from the station yards, side tracks, elevators or warehouses to the junctions of other railroads, when not billed from stations on its own road to said junction, and from the junctions of other railroads to the stations, side tracks, elevators and warehouses situated on the tracks owned or controlled by the company doing said switching; it is that transfer charge ordinarily made for moving loaded cars for short distances for which no regular waybill is made, and which do not move between two regularly established stations on the same road."

The complainant testified on the hearing of this case before this commission that the respondent discharged freight at the place of business of Cleary & Payne, the place where he, Mr. Brining, wanted the car switched, and that it also at times received small consignments of lumber and other freight at that place.

When this commission adopted Rule 21 it evidently was of the opinion that railroad companies were required, under the law, to perform just such service as was demanded by the complainant of the respondent railroad company.

This commission, as formerly constituted, in the case of the Union Brewing Company, of Peoria, Illinois v. the Chicago, Burlington & Quincy Railroad Company, practically decided the question involved in this case. In that opinion the commission said: "The principle upon which the distinction should be made between the obligation to haul one mile and the obligation to haul ten is very difficult to perceive; and the interests of a patron might become as vitally involved in the one service as the other. If one wishes a switching service only, and is willing to pay for it, why can he not command the service?"

On the hearing of this case it was admitted by counsel for respondent that the maximum rate fixed by this commission of \$2.00, which amount was tendered by complainant to the agent of respondent for switching this car, was fair and reasonable compensation for the service.

On Sept. 29, 1891, W. S. Weed, General Freight Agent of the Toledo, St. Louis & Kansas City Railroad, in a communication to the Railroad and Warehouse Commission, stated that: "At Cowden, Ill., the O. & M. takes the stand that while they are required to switch loaded cars from us to be unloaded on their tracks, they do not understand that it is obligatory for them to switch empty cars to their side-tracks to be loaded for shipment via our line," and asking for a full interpretation of the law as it affects the matter of switching at junction points.

On Nov. 3, 1891, F. E. Fisher, General Freight Agent of the St. Louis, Alton & Springfield Railroad Company, in a letter to the commission stated that: "At Alton, Ill., The Alton Lime and Cement Works are located on our tracks, and can only be reached by other companies through our switching their cars. This company furnishes lime to the Springfield Gas Company, who have all the shipments routed via the C. & A. R. R., notwithstanding the fact that we agreed and are willing to meet any rate the C. & A. R. R. makes."

On May 26, 1892, Mr. Luther Pennington filed complaint with this commission against the C. & A. Railroad Company for refusing to switch cars delivered at Joliet over other lines to points on the C. & A. road, and stated that in interviews with the General Manager, C. H. Chappell, that he had been informed that industries on the C. & A. must buy their coal from mines situated on the C. & A.

All these communications were referred by the commission to Hon. George Hunt, then Attorney General, for his opinion. The Attorney General, on the 20th of June, 1892, rendered his opinion to the commission, from which we quote the following:

"While the questions submitted differ in some particulars, they all relate to the subject of switching cars by a railroad company at a junction point, which cars have been or are to be transported over a line of railroad controlled by another company.

"In my opinion it is the duty of every railroad company which is doing a general railroad business to haul all cars, loaded or unloaded, properly delivered to it or required to be hauled over its line or a part thereof for the carriage of freight either for another railroad company or for a private patron.

"The railroad company can not compel the public to patronize its line either by a refusal to deliver cars to another railroad, as in the 'Bluff Line' case, or by a refusal to receive them, as in the Pennington case at Joliet. The patron may select his carrier, and the railroad company is bound to carry for all those offering freight demanding service, and can not discriminate by refusing to carry, on the ground that the commodity would come into competition with like commodities or industries on its own line, or that it would lessen the demand for commodities that might otherwise be carried over its own line.

"So in the matter inquired about by Mr. W. S. Weed, concerning the duty of the O. & M. at Cowden, I am of the opinion that it is the duty of the O. & M. Railway Company to switch empty cars, delivered to it at the junction, to its side-track, as requested, to be there loaded for shipment over another line, and to return them to the connecting road, as well as to receive loaded cars to be unloaded at its side-track.

"In the 'Bluff Line' case, I think the shipper may select the line over which he will ship the lime referred to, and if he prefers the C. & A. line, it is the duty of the 'Bluff Line' to deliver the cars to the C. & A. as requested, and the 'Bluff Line' can not compel the shipment of the lime over its road by refusing to switch the cars to the other road.

"In the matter of the complaint of Luther Pennington, at Joliet, the statement is indefinite as to the distance the cars had to be hauled by the C. & A. R. R. Co. The railroad company, however, it appears, refuses to haul the cars furnished by Pennington on any terms; and in this case, it seems to me the railroad company refuses to perform a plain duty. The apparent object of the refusal is to compel the purchaser of coal, to whom Pennington desires to deliver it, to purchase coal which shall be shipped over the line of the C. & A. Railroad, and from a mine located on that road. The public can not be coerced in this matter to patronize any particular mine or line of railroad. It is the duty of the company to take the coal offered to it at its junction of another road, to be de-

livered at any point for the delivery of coal on its road. Whether the service which it is required to perform is such as to amount to a 'haul,' or is only 'switching,' should be determined by the Railroad and Warehouse Commission, and a reasonable maximum charge for such service should also be fixed by that body.

"In the matter of the Mexican Amole Soap Company v. P. & P. U. *et al*, decided Feb. 1, 1895, the commission here held, under the facts in that case, that one railroad company could not be compelled, under the law, to furnish terminal facilities for another. The question in that case was not whether one railroad company could be compelled to switch cars for another, but whether one railroad company could be compelled to furnish terminal facilities for another. The facts presented in the case now under consideration are essentially different from the facts presented in the case last above referred to.

"The commission is therefore of the opinion that it was the duty of the respondent to perform the switching service demanded by the complainant. But the statute fixes no fine or penalty for refusing to switch cars, and from a careful examination of the statute it is evident that the prosecutions which it is incumbent upon this commission to institute and conduct are prosecutions for those penalties denounced by the statute against railroad companies for violation of the several provisions of the railroad and warehouse law.

"The complainant must seek his remedy in a civil action for damages, or by writ of mandamus to compel the switching of cars."

At a meeting of the commission at Springfield on the 7th day of November, A. D. 1895, the above opinion was concurred in by the commission, and decision is rendered accordingly.

W. S. CANTRELL, *Chairman*;
THOMAS GAHAN, *Commissioner*;
GEO. W. FITHIAN, *Commissioner*.

JOSEPH W. VANCE AND WILLIAM S. WASHBURN, DOING BUSINESS UNDER
THE NAME OF THE EGYPTIAN COAL COMPANY

V.

CHICAGO, PADUCAH & MEMPHIS RAILROAD COMPANY.

OPINION BY GEORGE W. FITHIAN, *Commissioner*.

The complaint filed by the petitioners allege, among other things, that on Dec. 31, 1894, the defendant switched for complainants from their mine known as the Spiller mine near Marion, to the Cairo Short Line Railroad, at Marion, Ill., a distance of less than three miles, one car of coal and charged and collected from consignee therefor the sum of five dollars. That said car was billed and shipped to W. B. Ward, at Metropolis, Ill. Also on Jan. 2, 1895, complainants shipped to said Ward, at Metropolis, Ill., one other car of coal from their said mine, and another and different car of coal on the 31st of January, 1895; and on the 19th

day of January, 1895, they shipped one car of coal to one J. R. Mayer, at Creal Springs, Ill., and another car on the 5th day of February, 1895, to the same consignee; and on the 15th day of January, 1895, another car to complainants at Marion, Ill., each of which cars was received by the said Chicago, Paducah & Memphis Railroad Company at said Spiller mine and switched by it to Marion, Ill., a distance of less than three miles, and delivered to the Cairo Short Line Railroad Company for shipment to its destination, except the last mentioned car, which was delivered to complainants. That said coal mine is not a station on defendant's road, that said cars were billed from Marion, and that the said railroad company charged for hauling each of said cars a distance less than three miles the sum of five dollars.

The evidence in this case shows that Spiller mine is located about two and one-fourth miles north of the junction of the Cairo Short Line and the Chicago, Paducah & Memphis Railroads, at Marion, Ill., and that it is not a station on the last named railroad. There is no station house or agent of said railroad company maintained at said Spiller mine, and the cars transported above were billed from Spiller mine to junction of said railroads by the railroad agent of the Chicago, Paducah & Memphis Railroad Company, at Marion, Ill.

The attempt was made by the railroad company to show that these cars were billed from Johnston City, a station on the defendant's road, to Marion, but the commission do not think that the evidence supports that contention. Rule 21 of this commission fixes the maximum rate for switching loaded cars for distances not exceeding three miles at two dollars per car, and defines switching to be "the hauling of loaded cars from the station yards, side-tracks, elevators or warehouses, to the junction of other railroads when not billed from stations on its own road to said junctions, and from junctions of other railroads to the stations, side-tracks, elevators and warehouses situated on the tracks owned or controlled by the railroad company doing said switching; it is that transfer charge ordinarily made for removing loaded cars for short distances for which no regular waybill is made and which do not move between two regularly established stations on the same road." The contention of the railroad company is that the services performed in the matter complained of were not switching services, but were regular hauls for which they were entitled to charge the usual maximum rates.

The opinion of the commission is that the service rendered was a switching service; that the distance was less than three miles, and that the railroad company was only entitled to charge two dollars per car, the maximum rate fixed by this board under Rule 21 for switching cars. That the charge of five dollars per car collected by the railroad company was in excess of the rate fixed by this board and was extortionate.

And the commission further finds that the said Chicago, Paducah & Memphis Railroad Company, by collecting from the complainants a rate in excess of two dollars for each car, under the statute rendered itself guilty of extortion.

Dated Jan. 7, A. D. 1896.

W. S. CANTRELL, *Chairman*;
THOMAS GAHAN, *Commissioner*;
GEO. W. FITHIAN, *Commissioner*.

POSTAL TELEGRAPH COMPANY

V.

MOBILE & OHIO RAILROAD COMPANY.

Appearances—Mr. J. R. McIntosh, for petitioner; Mr. Lansden and Mr. Herbert, for respondent.

OPINION BY LINDLY, *Chairman*.

This is a petition filed by the Postal Telegraph Company asking for an order compelling the Mobile & Ohio Railroad Company to distribute the poles and material for the construction of a line of telegraph between stations, the petition setting forth that it was the purpose of the said Postal Telegraph Company to construct a line of telegraph from Cairo, Ill., to East St. Louis, in connection with a line extending to Mobile, Ala.

The petition above mentioned was filed on August 10, 1897, and the case was called for hearing on Sept. 7, 1897, at which time representatives of both petitioner and respondent appeared before the commission and the counsel for respondent thereupon entered a motion asking that the matter be continued for the reason that an injunction had been granted by the circuit court of the county of Jackson restraining the said Postal Telegraph Company from constructing its line of telegraph on the right-of-way of the said respondent. The case was continued pending the hearing of the injunction suit.

On July 9, 1898, the injunction was dissolved by Judge Vickers, circuit judge of the county of Jackson, whereupon the petitioner prayed for a hearing upon its petition. The case was set for trial on July 28, 1898, at which time it was heard.

The main ground upon which the petition is based is the fact that the said respondent did distribute the poles and material for the construction and repair of the telegraph line of the Western Union Telegraph Company between stations, and that the refusal upon the part of the respondent to render a like service for the petitioner was unjust discrimination within the statute of Illinois governing unjust discrimination.

The respondent, the Mobile & Ohio Railroad Company, filed its answer to the above mentioned petition, which answer set forth that upon the 16th day of June, 1896, the said respondent entered into a contract with the Western Union Telegraph Company, under and by which contract the said respondent agreed to distribute the poles and materials between stations for the construction and repair of the telegraph line of the said Western Union Telegraph Company. In consideration of which the Western Union Telegraph Company agreed to furnish the respondent, among other things, one wire for the business of the railroad company, exclusively, from Jackson, Tenn., to St. Louis, Mo., to be operated in connection with the railroad company's wire from Mobile, Ala., to Jackson, Tenn. The telegraph company further agreed to set apart for the

joint use of both the telegraph company and the respondent, for the transaction of railroad and commercial business, one wire on its poles from Mobile to St. Louis, and one wire on branches where the telegraph company may have telegraph lines, it being understood in case of interruption to the exclusive railroad wires that important railroad messages, directing the running of trains, should have precedent on said joint wire along said railroad, and such messages should, also, have precedent on joint wires along branch railroads so far as the same legally may. It was further agreed upon the part of the Western Union Telegraph Company that if, at any time, the railroad company should require the exclusive use of more than the wires above mentioned it should have the right to appropriate to its own use one additional wire upon the poles of the Western Union Telegraph Company upon giving sixty days' notice in writing thereof to the telegraph company, and upon paying to the telegraph company the value of such wire upon the poles, including the insulators thereunto belonging, or that the railroad company might, at its own expense, erect such wire on such poles in such position as the telegraph company might designate.

This is as much of said answer as is necessary, in our opinion, to refer to for the decision of this case.

It was insisted by the petitioner that the agreement to distribute wires, poles and other necessary material for the Western Union Telegraph Company, by virtue of said contract, between stations, and a refusal to perform a like service for the Postal Telegraph Company constituted unjust discrimination.

The unjust discrimination provided by our statute refers only to any "unjust discrimination in rates or charges of toll or compensation for the transportation of passengers or freight of any description, or for the use and transportation of any railroad car." (Chap. 114, Sec. 125, H's. R. S., 1897.)

The discrimination complained of here is not an unjust discrimination under our statute.

The next question that presents itself, is it an unjust discrimination at common law?

The rule laid down by the clear weight of authority at common law is that "a railroad carrier, so far as concerns the receipt and transportation of goods, however it may be as to rates of freight, must, where the conditions and circumstances are identical, treat all shippers alike. It can not furnish facilities to some shippers and deny them to other shippers, unless there is a difference in the condition or circumstances such as make a discrimination a 'just one.'" (Elliott on R. R., Vol. 4, Sec. 1468, and authorities cited.)

On an examination of the authorities under this rule, it will be seen that this rule only applies to the delivery of goods at regular stations or stopping places. No well considered case can be found which holds that it is a duty that the railroad company owes to the shipper or the public to stop its trains at any other than regular stations.

In the case under consideration the respondent entered into a contract with the Western Union Telegraph Company, by which contract it receives special benefits. This contract is legal and binding both upon

the Western Union Telegraph Company and the railroad company so far as the construction and operation of its telegraph line is concerned. In consideration of the special benefits derived by the respondent it agreed to distribute the poles and material between stations. To hold that the railroad company would be bound to perform the same services for any other telegraph company that might see fit, by condemnation or otherwise, to pass over or along its right of way without receiving any benefit therefrom, would be destroying the right of contract.

The proof in this case does not bring it within the rule, as laid down in *Elliot on Railroads, supra*. "The conditions are not identical." There is a wide difference in the conditions and circumstances which makes the seeming discrimination here a just one.

The case cited by counsel for petitioner, *Mercantile Trust Co. v. Atl. & P. R. R. Co.*, 63 Federal, p. 915, does not militate against the rule here announced.

In that case an application was made to the receivers of the Atl. & Pac. R. R. Co., by the Postal Telegraph Company for an order requiring the railroad company to distribute the necessary material between the regular stations and the furnishing of water to the force engaged in the construction of their line. A brief extract from that opinion shows an entirely different state of facts than is presented by this record.

The court says on page 915 of the opinion:

"The evidence shows what is also judicially known to the court that the right-of-way of the Atl. & Pac. Ry. Co., between the Needles and Mojave is over a desert country, and that the railroad company, through the receivers, has possession and control of all the available water supply upon and along the right-of-way. Evidence was also given to the effect that it was customary for the railroad company to furnish miners and other parties at and between the stations with water for their necessities upon compensation paid therefor, and that the poles and other materials can be distributed and water furnished to the petitioner without any inconvenience and in accordance with the usual and ordinary method of transacting the business of the railroad between the Needles and Mojave."

It is apparent in the case cited that it was customary for the railroad company to furnish water between stations to all parties not in the employ of the railroad company performing any labor between the regular stations between the two points named. The railroad passed through a desert country. The regular stations were at long intervals. The railroad was in the hands of receivers, who were operating the road and were clothed with a large discretion in the matter, and under the peculiar facts existing in the case the court made an order providing for the distribution of poles and materials between stations. This case is clearly not in point.

It can not be maintained that because a railroad company should stop its train between stations to permit a passenger to alight on one or two occasions that it would thereafter be bound, or owe any duty to the public or any one, to perform a like service for some one else. Or, if a railroad company should see proper, under certain circumstances, to deliver freight at a point between stations, that it would be bound as a matter of law to stop at such point and deliver freight for other persons, or for

the public in general. Nor can it be successfully maintained that if a railroad company makes a contract by which it is itself specially benefited, to deliver material between stations for the construction and operation of a line of telegraph which is necessary to the operation of the railroad, that it should be bound to distribute like materials for other telegraph companies from whom it derives no special benefit, by contract or otherwise, and that its refusal so to do would constitute unjust discrimination.

The only duty incumbent upon the respondent in this case is to receive, transport and deliver the poles and materials for the Postal Telegraph Company at its regular stations upon proper compensation being paid therefor.

Under the condemnation proceedings the Postal Telegraph Company has an easement over the right-of-way of the Mobile & Ohio Railroad Company, which gives it the right to enter upon the right-of-way of the Mobile & Ohio Railroad Company at any point necessary for the construction of its line.

It is therefore ordered that the prayer of the petitioner be denied and that the petition be dismissed.

Dated Springfield, Ill., Aug. 23, 1898.

CHICAGO LIVE STOCK EXCHANGE

V.

VARIOUS RAILROADS.

A petition in this cause was filed by the Chicago Live Stock Exchange of Chicago against the various railroads in Illinois, asking for a revision of the schedule of rates on live stock. The parties appeared on the fourth day of May, 1897, when the petition was dismissed on motion of the defendants on the ground that the Chicago Live Stock Exchange was not an interested party under the rules of procedure of the Illinois Railroad and Warehouse Commission, whereupon leave was granted to various stock shippers and owners in the State of Illinois to file a petition in said cause, which petitions were filed, setting up the same cause of action. The various railroads filed their respective answers thereto.

The petition charges that the petitioners are engaged in the business of feeding and shipping live stock in the State of Illinois, and that the live stock owned, fed, shipped and sold by them is habitually shipped over the lines of defendants' railroads; second, that the defendants are common carriers, engaged in the transportation of passengers and freight by railroad, and as such common carriers are subject to the laws of the State of Illinois; third, that the published rates of the defendants' lines on live stock between points in Illinois are unreasonably high and extortionate, and that the said tariffs of defendants' lines on live stock are generally based on the schedule of maximum rates authorized by the Railroad and Warehouse Commission of the State of Illinois, and that the rates on live stock contained in said schedule of rates are unreasonably high; fourth, that it has been, and is, the custom of the defendant

railways to so adjust their rates on live stock between points wholly within the State of Illinois so as to exact the full measure of charges which they are permitted by said schedule of the Illinois Board of Railroad and Warehouse Commissioners to collect, without any regard to the conditions surrounding and which ordinarily are considered controlling factors in the adjustment of rates; fifth, that the rates at which defendant railways carry live stock from points in Illinois are adjusted on a scale so much higher than the rates from points within the State of Illinois to points in Indiana, Ohio or New York, that it has made it unprofitable for Illinois shippers to ship live stock to Illinois markets, and has resulted in discrimination against the Illinois markets and unreasonable and undue preference in favor of other markets; that the defendant railways decline to adjust their rates on live stock between points in Illinois to a basis reasonably fair, just and equitable.

Accompanying the petition and made a part thereof is a proposed schedule of rates on live stock submitted by the petitioners, which they ask the commission to adopt.

The defendant railways admit that they are common carriers, etc. They deny that the schedule of maximum rates authorized by the Railroad and Warehouse Commission on live stock is unreasonably high, but insist that they are unreasonably low. The defendants admit that the tariffs of defendants' lines on live stock are generally based on the schedule of maximum rates authorized by the Railroad and Warehouse Commission. The defendant railways deny that it has been and is their general custom to so adjust their rates on live stock between points wholly within the State of Illinois so as to exact the full measure of charges which they are permitted by law to collect, without regard to surrounding conditions, etc. The defendant railways further deny that the rates on live stock from points in Illinois to points in Indiana, Ohio and New York are adjusted on a scale so much lower than the rates applying wholly within the State of Illinois, so as to discriminate against Illinois markets, and aver that if there is any discrimination against Illinois markets on live stock shipments it arises from the excessive and exorbitant commissions charged shippers of live stock by the commission merchants at the Union Stock Yards and the excessive charges of the Union Stock Yards and Transit Company for handling such live stock at the Union Stock Yards. Defendant railways further deny that the proposed schedule of rates offered by petitioners would be fair and just but, on the contrary, would be unjust, unfair and inequitable.

In the decision of all cases brought before this commission, it is the duty incumbent upon us to consider the results as they will affect all interested parties, the investor or employer, the employé and the general public.

The law contemplates that we shall be the custodian of the interests of these three great classes, and in the performance of this duty it is necessary that we shall consider how a reduction of rates would affect, not only the railroad company itself, but the employés and the public.

The annual report of this board shows that, for the year ending June 30, 1897, there was a total decrease in the revenues of the roads in all

departments in Illinois of \$2,338,541.00. The result of this decrease in receipts affected more materially the employés of the roads than any one else, because the records show that the decrease in the number of employés was 3,151 and that the decrease in the amount of salaries paid was over one million dollars.

This report further shows that while there was a decrease in the earnings of the roads of almost two millions and a half dollars, a decrease in the number of employés of more than three thousand, a decrease in the salaries paid to the employés of over a million dollars, that the amount of freight carried was increased by 619,314 tons, which is evidence that a larger amount of business was done by the railroads with a less number of employés.

In this case a petition was presented to the board, signed by twenty thousand railroad employés, asking that the freight rates on live stock should not be reduced. This petition was presented by men who are at the heads of different organizations, representing seventy thousand railroad employés in the State of Illinois.

It must be admitted by all fair-minded men that the railroads, having just emerged from the long period of depression brought about by the false economic policies of the government, which drove many of them into bankruptcy, and into the hands of receivers, are in no condition, at this time, to stand a further reduction in the freight rates, when the evidence shows that, in the last 30 years, those rates have been cut in two.

In view of these and other conditions, which it is not necessary here to reiterate, it is evident that any reduction in rates would materially affect the wages of those seventy thousand railroad employés, and it necessarily follows that their diminished capacity to earn would lessen their consumption of the products of all who produce the necessities of life.

This is the most progressive age in the world's history; this the most progressive nation. Our railroad systems have made the most rapid progress in the way of rapid transit and facilities, and our railroad employés are the best that the world produces, and the tendency of the present condition of traffic is to largely increase the number of employés, and we do not feel that it is justice to the employés or to the public to lower the present live stock rates, which would affect their existing wages, which, to say the least, are now only remunerative.

After having passed through the condition that existed from 1893 to 1896, in which period all business interests of the country had suffered materially, and all evidence now indicating that the country is on the eve of prosperity, it would be unwise to make a material reduction in rates that might seriously cripple the railroads of the country, which are the arteries of the progress of the nation.

A large mass of testimony has been taken bearing upon the subject at issue. The case has taken a wide range and many questions discussed and facts submitted that are not necessary to be considered in the decision of the case. Much has been said, and many exhibits offered, showing through rates from Southern Illinois points to eastern markets, and from Kansas City to Chicago. It would, perhaps, be a sufficient answer to so much of the case that presents the question of interstate rates to say that the commission has no power over such rates, and could not change them if it should desire so to do, but, in so far as such rates may

be used in comparison with the Illinois rates, it is proper to consider them. Nearly every rate which has been suggested for comparison by the petitioners in this case was over through lines running from the Mississippi river to the seaboard, and the rates complained of are those of intersecting lines crossing the through lines from the west to east. It was not shown that such rates were remunerative or otherwise.

It must be conceded that the east and west lines, passing through the State of Illinois, are entitled to a fair share of the business tributary to their lines, and that points where they cross north and south lines are clearly competitive territory. The east and west lines, acting under the influence and control of eastern trunk systems, and the desire to secure what each may conceive to be its share of traffic from competitive territory, will change rates from time to time so as to, as nearly as possible, secure such share of the competitive traffic. It has not been shown in this case that the east and west lines are carrying more than they are entitled to of the competitive traffic. A reduction of rates made by this commission solely upon the ground of reducing the present Illinois rates so as to make them equal to the east and west rates at these competitive points, upon the theory that such a course would result in more stock being shipped to Chicago from such points, would not bring about the effect sought; because it can not be supposed for a moment that the east and west lines would submit to such wholesale diversion of traffic from their lines, but the logical conclusion is that they would promptly reduce their rates to meet the rates so fixed by the commission, and the same condition of things would exist as before the reduction, and, therefore, the very object sought would not be attained, and no more stock would go from such points to Chicago than at present.

The proposed schedule offered by petitioners, if adopted by the commission, would not reduce the Illinois rates at these intersecting points to a basis as low as the east and west rates now are at such points.

If the rates in Illinois are to be reduced so as to remedy the condition at these intersecting points, they must be made lower than the schedule proposed by the petitioners.

It must be remembered that the east and west lines traversing the State of Illinois bear their burden of taxation and contribute their support to the public school fund, the road and bridge fund, and all other forms of local taxation, the same as north and south lines traversing the State entering the city of Chicago.

The commission is bound to act fairly and justly to all lines in the State of Illinois without regard to which way they run or what market they enter.

In all the contests waged in the legislatures of the various states, the Congress of the United States, and the several courts of the different states for the control of the railroads by the power that created them, no law has gone further than to claim the right to fix the maximum rates by the body created by the State for that purpose and to punish discrimination.

The Illinois commission has power to fix the maximum rates that a railroad may charge for hauling any kind of freight or passengers, but has no power to fix the minimum rate for hauling the same. The railroad can carry freight at its own price so long as it does not exceed the

maximum rate thus fixed, and carries the freight at the same compensation for all shippers from the same point, without interference of the Railroad Commission, unless discrimination is proven. This condition will remain so long as the commission has only power to fix maximum rates.

The rule of the Interstate Commerce Commission, that the road can not charge more for the short haul than it does for the long haul, opens wide the doors of competition, and has resulted in the exceeding low rates referred to in the evidence.

Madness seems to have seized many railroad managers, and in their desire to carry freight much of the freight of the country is carried at prices far below actual cost. The conditions have obtained, and this rate cutting has continued, until there is less faith among railroad managers in regard to their agreements to maintain rates than can be found in any other business. There seems to be no good faith, so far as traffic agreements are concerned.

These facts, together with the depression in railroad business above referred to, in 1893 to 1896, led to the bankruptcy and receiverships referred to of these seaboard lines.

For this commission to reduce the rates in Illinois to meet these reckless rates, would be worse than suicide to our Illinois lines, and materially unjust and unfair to one-fifth of our population who are directly interested in the railroads of our State.

The main question presented by the record in this case is, are the present live stock rates in Illinois too high, and should they be reduced?

The present schedule of maximum rates on live stock has been in force since July 1, 1895, at which time a general revision of the schedule of maximum rates on all commodities was made. It is not desirable, either for the stock shipper or the railroads, that constant changes in rates should be made.

The consideration of freight rates is of necessity almost entirely one of comparison. It is not possible, in this case, to adjust rates upon the theory suggested by the Supreme Court of the United States in the Nebraska Rate Case, "that rates should be adjusted so as to yield such a revenue that would pay a fair return on the money invested in the construction and operation of railways." If that is the rule, it would also be fair to consider the cost of raising live stock and transporting it to market in order that the rates should be so adjusted that the stock shipper and raiser might receive a fair return on his investment. There is no evidence in this case touching either of these propositions.

Comparing the rates on live stock in Illinois with other states practically occupying the same territory, namely: Iowa, Michigan, Wisconsin, Minnesota, Dakota, Missouri and Nebraska, some of which have laws similar to Illinois, it will be found, without almost a single exception, that the live stock rates in Illinois are materially lower than in any other western state.

It appears from the evidence offered that in Illinois the distance tariff for horses and mules, for car-load lots, in cents per one hundred lbs. for 100 miles is 10.4; cattle, 9.5; hogs, 13; sheep, 14.4; while in Iowa the rate on horses and mules for the same distance is 12.5; cattle, 11.32;

hogs, 10.96; sheep, 16.00 per one hundred lbs. In Michigan, for a like distance, the rate on horses and mules is \$38.50 per car; cattle, 17.5; hogs, 17.5; sheep, 17.5 per hundred lbs. In Wisconsin for a distance of 100 miles the rate on horses and mules is 16.5; cattle, 15; hogs, 18.5; sheep, 18.5 per hundred lbs. In Minnesota the rate for 100 miles on cattle is 15.; hogs, 15.; and sheep, 15. per hundred lbs. In Dakota, for the same distance, the rate on cattle is 16.5; hogs, 18.5; sheep, 19.5 per hundred lbs.

Thus, it is evident that Illinois has a much lower live stock rate than neighboring states similarly situated. Yet, it might be contended that the rates in the adjoining states are too high. That leads us to the consideration of the question of the cost of carrying live stock as compared with the cost of carrying other classes of freight. An average train of live stock, as shown by the proof, consists of about 25 cars, while an average train of dead freight consists of about 35 cars. The stock train is required to make quick time and can not be delayed. Any delay is the occasion for a claim for damages should there be an unfavorable change in the market price to the shipper. Stock is required to be watered en route. If an accident occurs by which the stock is injured the loss is necessarily great as compared with accidents to dead freight. The proof shows that free transportation is given to one person accompanying one car of stock and one-half fare for the return trip; and shippers of two or three cars are entitled to free transportation for one person to the market and return; and as the number of cars increases there is a corresponding increase of the persons entitled to free transportation.

Under the rule laid down by the Supreme Court of Illinois, persons traveling in these stock trains are entitled to recover for personal injuries growing out of any negligence of the railroad company the same as parties traveling on passenger trains.

It was further shown in the proof that the value of a car load of cattle shipped in a standard car is about \$850.00; such valuation being based on twenty head to the car on a value of \$42.50 per head. The revenue derived by the railroad company, under the present rates fixed by the Illinois Railroad and Warehouse Commission for a distance of 100 miles on a car load of cattle, is \$18.05; while the revenue derived by the railroad company for carrying a carload of hay, based on nine tons to the car, at \$7.50 per ton, making the car load \$67.50 for a distance of 100 miles, is \$12.70. A carload of brick, valued at \$48.00 per car, earns for the railroad company, for a distance of 100 miles, \$30.43. Lumber, valued at \$144.00 a car, earns for the railroad for a carriage of 100 miles, \$26.04. Salt, which has a valuation of \$50.40 a car, earns \$20.15 per car for a distance of 100 miles.

A large number of other items of dead freight might be cited to show that the rates for carrying live stock are relatively much lower than for carrying almost any other commodity. Live stock is among the most valuable of freight carried, and the value of the commodity carried should rightfully be considered in fixing the rate of carriage.

It further appears in the proof that about ninety per cent of all the cars used for the transportation of live stock are returned empty, while only twenty per cent of the cars used for the transportation of other commodities are returned empty.

The present market price of live stock is much higher than at any time since the last revision of live stock rates in this State, and is today paying to the stock raiser a better profit than any other commodity raised on the farm, and is being transported to market at a relatively lower freight rate than any other commodity of like value.

The commission, having carefully examined all the evidence introduced, is of the opinion that the present live stock rates in Illinois are reasonable and should not be reduced.

During the progress of the trial of this case in March, 1898, the question of the two dollar terminal charge made by the defendants for delivering stock at the Union Stock Yards was raised. There is nothing in the original petition, or answers filed thereto, touching this question; but the commission, with a view of trying to adjust the question of the terminal charge, held several conferences with the representatives of the railroad companies and the Union Stock Yards & Transit Company relative thereto. The commission is not called upon to decide the question of this terminal charge, as such question is no part of the record in this case. Much of the delay in the decision of this case has been occasioned by the attempt to bring about such adjustment.

The representatives of the railroad companies have stated to the commission their willingness to take off the two dollars terminal charge provided the Union Stock Yards & Transit Company would take off their trackage charge for the use of the tracks of the said Union Stock Yards & Transit Company from the termini of the various railroads to the Union Stock Yards. The commission has been unable to secure any agreement between the railroad interests and the stock yard interests looking toward the removal of the terminal charge of two dollars or any reduction of the charges made by the Union Stock Yards & Transit Company for trackage, yardage, etc.

It is shown by the representatives of the railroad companies that the two dollars charges will not more than cover the trackage charge imposed by the Union Stock Yards & Transit Company and the cost of furnishing engines and crews to handle the stock to the Union Stock Yards and until there is some legislation on this subject the commission is unable to regulate the charges made by the Union Stock Yards Company.

It is therefore ordered that the petition be denied, and that the schedule of maximum rates on live stock be and remain the same as now in force.

Dated Sept. 8, 1898.

CITIZENS' COAL MINING COMPANY, A CORPORATION

V.

CHICAGO & ALTON RAILROAD COMPANY.

Appearances—For complainant, Mr. Wilson; for respondent, Wm. Brown.

OPINION BY LINDLY, *Chairman*.

The petitioner in this case avers that the Chicago & Alton Railroad Company demanded and received five dollars per car for switching cars loaded with coal from the junction of the said Chicago & Alton Railroad Company with the St. Louis, Chicago & St. Paul Railway Company to the Alton Railway & Illuminating Company, which is situated on the line of the said Chicago & Alton Railroad Company, and not a regular station, and which is less than two miles from the junction aforesaid.

The respondent did not deny that it charged five dollars per car for switching carloads of coal from the junction aforesaid to the Alton Railway & Illuminating Company, nor that the distance from the said junction to the said Alton Railway & Illuminating Company was less than two miles. The said respondent set up in its answer and in the evidence before the commission, as a reason for making said excessive charge that it was done in retaliation for the said St. Louis, Chicago & St. Paul Railway Company charging five dollars per car for switching cars from the junction of the said Chicago & Alton Railway Company to manufacturing establishments situated on the line of the said St. Louis, Chicago & St. Paul Railway Company.

The evidence in this case sustains, beyond controversy, the petition of the petitioner, and this commission is of the opinion that this case comes clearly within rule twenty-one of the "Railroad and Warehouse Commissioners' Revised Schedule of Reasonable Maximum Rates of Charges for the Transportation of Passengers and Freight on all the Railroads in the State of Illinois," and that the said respondent had no right, nor does it have any right, to charge more than the maximum rate set forth in said rule twenty-one, which reads as follows:

"The reasonable maximum rate for switching loaded cars for distances not exceeding three miles shall be two dollars per car. Switching includes the hauling of loaded cars from the station yards, side tracks, elevators or warehouses to the junctions of other railroads when not billed from stations on its road to said junctions, and from junctions of other railroads to the stations, side tracks, elevators and warehouses situated on the tracks owned or controlled by the railroad companies doing said switching; it is that transfer charge ordinarily made for moving loaded cars for short distances for which no regular way-bill is made, and which do not move between two regularly established stations on the same road."

It is, therefore, ordered and decreed by the Railroad and Warehouse Commission of the State of Illinois, that no charge made for switching

cars loaded with coal or other commodities within the city of Alton shall exceed two dollars per car, when said switching is within the limits of Rule 21, above set forth.

Dated, Springfield, Ill., Dec. 6, 1898.

BOSTON WATER AND LIGHT COMPANY

V.

ST. LOUIS, CHICAGO & ST. PAUL RAILROAD COMPANY.

OPINION BY LINDLY, *Chairman*.

The complaint in this case was filed on Oct. 12, 1898. The respondent filed its answer on October 27, and the matter was set for hearing in Springfield, Ill., on December 6, at which time it was heard, both complainant and respondent being represented.

The complainant sets forth in its complaint that the respondent, a corporation organized and doing business under the general railroad law of the State of Illinois, has been persistently violating, within the past six months, Rule 21 of the "Railroad and Warehouse Commissioners' Revised Schedule of Reasonable Maximum Rates for the Transportation of Passengers and Freight in the State of Illinois," by charging the complainant herein a greater sum than two dollars per car for switching loaded cars in the city of Alton for distances not exceeding three miles. The complainant cites several particular instances in which defendant charged it in excess of two dollars per car for switching loaded cars within the city of Alton for distances not exceeding three miles. The complainant further sets up that on divers other occasions the defendant charged it more than two dollars per car for switching loaded cars from the junctions aforesaid to complainant's waterworks; and that said waterworks are in said city of Alton and within one hundred feet of defendant's track and less than two miles from the junctions aforesaid.

The defendant, in its answer, admits that on the 9th day of July, 1898, a car loaded with cement, shipped to said city of Alton over said Cleveland, Cincinnati, Chicago & St. Louis Railway and consigned to complainant at said city of Alton, was transported by the said defendant from the junction of said defendant's railroad with the railroad of said C., C. & St. L. Ry., over said defendant's railroad to the waterworks of said complainant; and that, for so transporting said car, said defendant charged and required said complainant to pay, and complainant did pay to defendant, the sum of four dollars and seventy-three cents.

Defendant also admits that on the 17th day of August, 1898, a car loaded with alum, shipped to said city of Alton over the Chicago & Alton Railroad and consigned to complainant at said city of Alton, was transported by defendant from the junction of said defendant's railroad with the railroad of said Chicago & Alton Railroad Company over said defendant's railroad to the waterworks of said complainant; and that, for

so transporting said car, said defendant charged and required the complainant to pay, and the complainant did pay to defendant, the sum of six dollars and seventy-seven cents.

As to the allegation in said complaint that on divers other occasions the defendant charged it—the complainant—in excess of the legal rate for switching loaded cars within the city of Alton, the defendant neither admitted nor denied, but called for strict proof.

The defendant, in its answer, further admits that there is a side track to the waterworks belonging to the complainant, but avers that the said side track belongs to and is a component part of the tracks of said defendant.

The defendant, in its answer, sets up that the track leading from the junction, where the cars were transferred to the works, of this company, and the side tracks at said works belong to and are a part of the railroad of said defendant company.

The defendant, further answering, states that the charges made against and collected from the said complainant for transporting the cars, as alleged in said complaint, are reasonable and necessary for the proper maintenance and operation of defendant's said railroad.

In conclusion, the defendant denies that it has, within the six months last past, persistently and grossly violated Rule 21 of the Railroad and Warehouse Commission of the State of Illinois.

The proof in this case fully sustained the allegations set forth in the complaint of the complainant. It was proven that the waterworks belonging to the complainant were situated along the line of the defendant's railroad, in the city of Alton, and were less than two miles from the junction where the cars were transferred from other railroads to the railroad of the defendant, for the purpose of being switched by the defendant to the place of business of the complainant.

The defendant admitted at the hearing, (and as admitted in its answer), that it did make the several charges set forth in the complaint, but the defendant maintained that it owned the tracks, and owned the switch, and that fact gave it the right to charge the complainant the regular "cents per hundred pound" rate, as set forth in the schedule of maximum rates of this commission.

It was further proven that in billing these cars to the complainant from the junction aforesaid the defendant billed them to the first station beyond the works of the complainant, and charged the complainant the regular cents per hundred pound rate for the haul, dropping the cars off on the side track of the said complainant.

The defendant averred and claimed that this was the custom and the usual manner in which it transacted this business; that, in consideration of the fact it owned the track, it therefore had a right, under our rules, to charge the several amounts paid by the complainant for transporting these cars.

Rule 21, above referred to, reads as follows:

"The reasonable maximum rate for switching loaded cars, for distances not exceeding three miles, shall be two dollars per car. Switching includes the hauling of loaded cars from the station yards, side tracks,

elevators, or warehouses to the junctions of other railroads when not billed from stations on its own road to said junctions, and from junctions of other railroads to the stations, side tracks, elevators and warehouses situated on the tracks owned or controlled by the railroad company doing said switching; it is that transfer charge ordinarily made for moving loaded cars for short distances for which no regular way-bill is made, and which do not move between two regularly established stations on the same road."

From this rule it is clearly apparent that whenever a loaded car is taken at the junction of another railroad to be transferred to any side track, elevator or warehouse situated on the tracks owned or controlled by the railroad company taking charge of such car at said junction, that the company doing said transferring shall deliver the same on their own tracks to the place of destination for two dollars, provided that it is not a regularly established station on the same road.

The evidence in this case showed that the place of business of the complainant is not a regularly established station on the line of the defendant, and under this rule it is clearly evident that the defendant was violating Rule 21 above set forth.

It is therefore ordered and decreed that the said St. Louis, Chicago & St. Paul R. R. Company, the defendant herein, shall deliver all cars taken at junctions, where within the distance specified in Rule 21, above set forth, for two dollars, and that the switching charges made by said defendant to the complainant shall not exceed two dollars per car load of material of any description where the switching is done by the defendant from the junctions of other roads, to the place of business of the complainant.

Dated Dec. 8, A. D. 1898.

JOHN MILLER

v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY.

Appearances—For petitioner, George L. Zink; for respondent, G. F. McNulty.

OPINION BY LINDLY, *Chairman*.

The complaint in this case was filed by John Miller against the railroad company, charging that the complainant, Miller, was engaged in business at Hornsby, in the purchase and sale of grain, live stock and of coal in carload lots; that he purchased his coal, during the time covered by the complaint, of the Consolidated Coal Company of St. Louis at its mine located on defendant's line of road one and one-third miles west

from Hornsby station; that the cars of coal were hauled by the defendant railroad company from said mine over its road to Hornsby, a regular station on said railroad, and placed on the switch for the use of complainant. The moving of the loaded cars of coal from Hornsby mine to Hornsby, under the proof, is shown to have been done by the defendant railroad company's regular trains. The proof shows that there is no station at the Hornsby mine. The proof further shows that the coal mine in question was over a mile beyond the switching limits at Hornsby station. After the loaded cars of coal were placed upon the siding at Hornsby station they were unloaded at the coal house of the complainant, or in truck and wagons, and were retailed by the complainant from Hornsby station. The evidence in this case further shows that the complainant, Miller, signed a statement, which is in the form of a request, to switch from Hornsby Illinois mine to Hornsby, Ill., giving the car number and the initial of the car desired to be handled. Upon this statement was placed a rate by the railroad company for the handling of each car: "Switching, \$2.50; rental of car, \$2.00," making a total charge of \$4.50 for handling each loaded car from the mine to Hornsby station, a distance of one and one-third miles.

It is contended that under Rule 23 of the schedule of rates made by the Board of Railroad and Warehouse Commissioners, which provides a switching charge of two dollars for handling loaded cars a distance not exceeding three miles from the station yards, side tracks, elevators or warehouses to the junctions of other railroads, when not billed from stations on its own road to said junctions, and from junctions of other railroads to the stations, side-tracks, elevators and warehouses situated on the tracks owned or controlled by the railroad company doing said switching; that there was an overcharge in this case of \$2.50 on each car. If the transportation of a loaded car from Hornsby mine to Hornsby station came within this rule, the contention of the complaint would be true, and there would clearly be an overcharge. While it is true that the railroad company in this case have required the complainant to sign a statement purporting on its face to be partially a switching charge and partially for the rental of the car, yet that does not constitute a charge for the moving of the cars in question from the Hornsby mine to Hornsby station, under this rule, a switching charge. A casual reading of the rule will clearly show that the facts in this case do not bring the movement of these cars complained of under a switching charge. The railroad company would have a perfect right, under the facts in this case, to charge the regular distance tariff rate for transporting the cars in question from the mine at Hornsby to Hornsby station. The regular rate for a distance of one and one-third miles on a car of coal would be over \$6.00 a car. The railroad charged in this case \$4.50, which is less than the rate that the railroad company could charge under the schedule of rates fixed by the Railroad and Warehouse Commission, hence there is no overcharge in this case.

Counsel for complainant in this case have a misconception of the meaning of Rule 23 governing the switching of loaded cars. The handling of loaded cars for a distance not exceeding three miles, of itself,

does not determine that it is switching within the meaning of this rule; there must be many other conditions existing in order to constitute it a switching charge. The handling of a loaded car from any factory or mine on the line of a railroad, for any distance, whether it be one mile or ten, to a regular station on the line of the same railroad, there to be delivered to the consignee, does not come within the meaning of switching, as defined by Rule 23, especially when the station to which it is hauled is the end of the haul and final delivery of the commodity in the car.

The commission, therefore, find that the handling of the cars in question is not switching within the meaning of Rule 23, and therefore the complaint is dismissed.

Dated at Springfield, Ill., this 23d day of October, A. D. 1899.

WILLIAM ATZEL

V.

CHICAGO TERMINAL TRANSFER RAILROAD COMPANY.

Appearances—For petitioner, I. Ingenthron; for defendant, M. Breeden.

OPINION BY LINDLY, *Chairman*.

Complaint was filed by William Atzel against the railroad company setting up certain overcharges made by the railroad company at different times. The evidence has been taken. It appears that the complainant is a coal and wood dealer in the city of Chicago, Ill., with places of business at 475 and 477 Kedzie av., in said city. Running alongside of said places of business the defendant has a track upon which deliveries of the shipments in question were made to the complainant. This track was called the Kedzie av. team track. The shipments consisted of coal and wood, and originated in other states. Most of the consignments consisted of various cars of coal, which originated in Pennsylvania.

The proof shows that the cars of coal were billed to one Rend, who was a wholesale dealer in coal, in the city of Chicago, and by him were sold to the complainant, Atzel, in carload lots. The defendant railroad company is engaged in a transfer and terminal business, that is, in handling cars from foreign roads. The cars of coal in question were received in Chicago by Rend or others as the consignee, and were sold by them and handled by the Transfer Company to the complainant's place of business.

The first question raised in this case that we desire to consider is: was the handling of the coal cars in question a part of an interstate haul, and has the commission jurisdiction over the subject matter of this complaint? It is insisted by counsel for the railroad company that, as there was no change in the carload lot, but that it remained in the original car, the package undisturbed, until it was delivered to the complainant, and the car having originated in a foreign state, was solely a subject of

interstate commerce. If this contention be true, then it would not be necessary for us to consider the other question in the case. A number of authorities have been referred to, to sustain the contention made by counsel for the railroad company, but we do not consider it necessary to refer to many of them.

In the case under consideration the coal was billed to Rend, as the consignee in Chicago. It was delivered to Rend in Chicago. It is true it was not unloaded by the railroad company into any warehouses, either of Rend's or of the company, but after the delivery to Rend it was sold by him to the complainant. It is true as a general rule that merchandise being once started upon its passage from one state to another, is subject to exclusive regulation by Congress until lost in the general mass of property of the state to which it is sent. This principle has been upheld principally in what is known as the tax cases and license cases, many of which have been referred to by counsel for the railroad company.

In the case of *Welton v. Missouri*, 91 U. S., 275, the court says: "That it would be premature to state any rules which would be universal in its application to determine when the commercial power of the federal government over a commodity has ceased, and the power of the state has commenced. It is sufficient to hold now, that the commercial power continues until the commodity has ceased to be the subject of discriminating legislation by reason of its foreign character. That power protects it, even after it has entered the state, from any burdens imposed by reason of its foreign origin."

In the absence of such considerations, it has been held that, for some purposes, goods pass from federal to state control at the moment when they are delivered by the carrier to the consignee. Commerce clause of the federal Constitution, page 66. *Fuqua v. Pabst Brewing Company*, 90 Texas, 298. The great difficulty that has arisen, however, is the practical application of the general rule.

In the case of *Brown v. Maryland*, 12th Wheat., 419, Chief Justice Marshall lays down the rule, "that importation of goods for sale was not complete until the goods had been sold, and the article could not be considered as incorporated with the general mass of property of the state while still remaining in the first hands and in the original package." This case was subject to great criticism and was in effect overruled by subsequent decisions. But in the case of *Leisy v. Harden*, 135 U. S., 100, the original rule laid down in *Brown v. Maryland* is sustained.

The question presented by this record does not involve, necessarily, the point sustained in the above cases; while it may be true that upon questions of the right to sell goods in the original package, although the sale of such goods are prohibited by the state to which they are shipped; and that no tax can be levied or license be collected on goods until they have become a part of the general mass of property in the state, on the ground that it is a matter of federal control under the commerce clause of the Constitution, yet we are of the opinion, in this case, that when the coal in question was received in Chicago by Rend, the consignee, that that ended the interstate haul, so far as questions arising out of the switching charges and track service charges made by the defendant in the case.

The defendant is engaged within the State of Illinois in the handling of foreign cars, and these charges for handling of such cars within the State are subject to regulation by the Railroad and Warehouse Commission of the State of Illinois. The charge made by the Terminal Railroad Company entered into and formed no part of the charges made by the railroad company for hauling the car from Pennsylvania to Chicago. The Terminal Transfer Railroad Company of Chicago is engaged in an independent business, and that of furnishing transfer and terminal facilities to the various railroads and to coal yards and other industries located in Chicago which its road reaches. To hold that the cars received by and handled by them from foreign railroads in original carload lots are not subject to State control, simply by reason of the fact that the carload lot has been undisturbed, would practically leave the Transfer and Terminal Company subject to no control whatever by the State, and it could impose any charge it saw fit without regard to the rates fixed by the Railroad and Warehouse Commission. In adopting this view we do not lose sight of the rule laid down in the tax and license cases, and original package cases referred to, but hold that the rule does not apply to the facts in issue as shown by this record.

The next question presented is, was the defendant railroad company guilty of extortion in making certain charges for the switching of the cars in question and the use of the team track? The proof shows that only 117 cars were placed upon the side track or team track, and according to the evidence some of them remained there from one to twenty-one days before they were unloaded. For the transportation of the cars to and from the side track or team track in question, the railroad company has made a charge of \$3.00 per car, and also a charge of \$1.00 for the use of the car and team track, making a total of \$4.00 for each car handled.

It is contended by counsel for the railroad company that under the act creating the Railroad and Warehouse Commission that there are seven different services for which rates may be established, six of which relate to the transportation of freight. While perhaps such a division may be considered as entering into the transportation of freight, yet in our opinion the various services referred to all enter into and are a part of the term "transportation of freight." Charge for transportation of freight includes all of the services performed by the railroad, such as hauling the car, use of car, and reasonable use of main and side tracks at points of destination. It is apparent from the proof in this case that in some instances there was an unreasonable delay in the unloading of the cars by Atzel. He made use of some of the cars for warehouse purposes. This is a growing evil at large terminal points, like Chicago. Loaded cars are held on side tracks, blocking the movement of trains and producing a car famine over the State. There ought to be some remedy for this condition. The law governing questions of demurrage charges is in a very unsettled condition. Whatever may be the opinion of the commission as to the extent of this evil, our own court has refused to sustain these charges.

In the case of Chicago & Northwestern Ry. Co. v. Jenkins, 103 Ill., 590, it was contended that the railroad company had a right to hold the

property until its charges for demurrage were paid. It appeared that the published rules and regulations of the company provided for the payment of such charges, yet the court says, "the right to demurrage, if it exists as a legal right, is confined to maritime law, and only exists by carriers by seagoing vessels. It only exists by contract. *Chicago & Northwestern Ry. Co. v. Jenkins*, 103 Ill., 599.

Again, in the case of the *C., C., C. & St. L. Ry. Co. v. Lamm*, 73 App., 592. This was a case when a \$1.00 charge was made for each day or fraction of a day after forty-eight hours' notice that the car remained unloaded. The court says: "Railroad companies can not create in their favor a demurrage lien on freight not removed from a car within a short time by simply publishing to the public their intention of doing so."

Acquiescence and payment of such charges do not create any liability against the consignee. It can only be created by contract or by statute. *C., C., C. & St. L. Ry. Co. v. Lamm*, 73 App., 599.

The Terminal Company had no right to impose the one dollar charge, but under the facts and circumstances as shown in this case, we do not believe it constitutes an extortion under the present statute governing extortions. The statute is a penal one, and must be strictly construed. An action of law would lie to recover the money paid, but such a case has not been made out, in our opinion, as would justify a prosecution under the statute for extortion.

The only other question in this case to be decided is the question of switching charges as governed by Rule 23, found in the schedule of reasonable maximum rates of charges as fixed by the Railroad and Warehouse Commissioners of Illinois.

The evidence in this case shows that some of the cars in question were hauled less than three miles by the road delivering them to Kedzie av. Wherever in this case the distance that the car was hauled was three miles or less, the railroad company had no right under that rule to charge more than two dollars for switching the car; and whenever the railroad company or companies, in this case, made a charge of more than two dollars for switching the car of coal to Kedzie av., where the distance was less than three miles, they were guilty of extortion; because the rule clearly sets forth that switching includes the hauling of loaded cars from "junctions of other railroads to stations, yards, side tracks, elevators, and warehouses situated on the tracks owned and controlled by the railroad company doing said switching." It is equally true that whenever, in this case, the distance that the car was hauled from the junction point to Kedzie av. exceeded three miles, that the railroad company hauling said car had a perfect right, and were entitled, to charge the regular schedule rates as fixed by the Railroad and Warehouse Commission of Illinois in their schedule of reasonable maximum rates of charges.

Dated at Springfield, Ill., this 5th day of December, A. D. 1899.

KEENEY & LITTLE

V.

TOLEDO, PEORIA & WESTERN RAILROAD COMPANY.

Appearances—For petitioner, Hamilton & Patton; for defendant, W. S. Horton.

OPINION BY LINDLY, *Chairman*.

This is a complaint filed by Keeney & Little against the Toledo, Peoria & Western Railroad Company, charging that:

First—That the T., P. & W. R. R. Co. will not quote rates of freight on grain to points known as Ohio river points.

Second—That the defendant above named is a common carrier engaged in the transportation of freight and passengers by railroad, and as such common carrier subject to the law of the State of Illinois.

Third—That the T., P. & W. R. R. Co. will not receive grain consigned to Ohio river points.

Fourth—That the T., P. & W. R. R. Co. will not switch to the C. & E. I. R. R. Co. grain in car lots consigned to Ohio river points.

Fifth—That the T., P. & W. R. R. Co. will not switch to the C. & E. I. grain in car lots at all.

Sixth—That with the exception of Brazil block coal, the T., P. & W. R. R. Co. will not switch bituminous coal in car lots from the C. & E. I. R. R. tracks to coal sheds on their lines in Watseka, Ill.

Seventh—That the T., P. & W. R. R. Co. will not switch anthracite coal from the C. & E. I. R. R. tracks to coal sheds on their lines in Watseka, Ill.

In regard to the first and third charge, that the T., P. & W. R. R. company will not quote rates of freight on grain to points known as Ohio river points and will not receive grain consigned to Ohio river points, we hold that this is a question of Interstate Commerce, and that it is wholly without the province of this commission. As to the other charges they can properly be considered together, as they really involve the same question, viz:

As to whether a railroad company should be compelled to switch loaded cars from an industry on their own line to the junction of another railroad, and whether they should be compelled also to switch loaded cars from a junction point of another railroad to an industry located on their own line, as set forth in Rule 23 of the Schedule of Reasonable Maximum Rates of Charges.

Rule 23 provides as follows:

“The reasonable maximum rate for switching loaded cars for distances not exceeding three miles shall be two dollars per car. Switching includes the hauling of loaded cars from the station yards, side tracks, elevators or warehouses to the junctions of other railroads when not billed from stations on its own road to said junctions, and from junctions of other railroads to the stations, side tracks, elevators and ware-

houses situated on the tracks owned or controlled by the railroad company doing said switching; it is that transfer charge ordinarily made for moving loaded cars for short distances for which no regular way-bill is made, and which do not move between two regularly established stations on the same road."

It appears from the evidence that the elevator and coal sheds of the complainants are situated upon the side track of the T., P. & W. R. R. Company; it further appears from the evidence that this side track is used both for the purpose of loading grain from the elevator into the cars, and also for receiving loaded cars of coal at complainants shed, and also are made use of by the railroad company as a team track.

The fact that the defendant railroad company uses the side track in question both for the purpose of a team track for the benefit of its patrons, as well as a side track for the benefit of the industries of the complainants, can not affect the question at issue. If the railroad company desires to make such double use of the side track in question, that is a matter of their own choice, and it can not affect the rights of the complainants in the use of the side track in question for the purposes for which they use it. So far as the complainants' rights are concerned in this case, the use by the railroad company of this track for a team track for their patrons does not affect the rights of the complainants, who are not seeking to use such track as a team track.

Under Rule 23 above cited, it is the duty of the railroad company to switch loaded cars from the elevator of complainants to the junction point with the C. & E. I. R. R. Company for a switching charge of two dollars, as provided in such rule, the distance being within the three mile limit.

It is also the duty of the defendant railroad company to switch cars from the junction point with the C. & E. I. R. R. Company to the elevator and coal sheds of the complainants situated on the side track in question for the same charge.

In the case of the Mexican Amole Soap Co. v. P. & P. U. Ry. Co. is referred to by counsel for defendant. There is a clear distinction between the case cited and the one at issue. It appeared in the case referred to that the delivery was made upon a team track. The proof in that case showed that the track in question was not used for the purposes of a side track to an industry, but was used purely as a team track for the delivery of commodities, merchandise, etc., to the patrons of the road. The distinction in this case is obvious as well as in the case of Brining v. C., C. & St. L. Ry. Co., also cited.

It is therefore ordered that the defendant, the T., P. & W. R. R. Co., be and they are hereby required to switch loaded cars for the complainants from the junction point of their road with the C. & E. I. R. R. Company to the elevator and coal sheds of the complainants, and to switch loaded cars from the elevator and coal sheds of the complainants to the junction of their line with that of the C. & E. I. R. R. Company on the payment of a switching charge of two dollars as provided in said Rule 23.

Dated at Springfield, Ill., this 5th day of December, A. D. 1899.

THE PEOPLE OF THE STATE OF ILLINOIS ON RELATION OF SIEGEL COPEL,
STATE'S ATTORNEY OF SALINE COUNTY, ILL.

V.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY.

OPINION BY LINDLY, *Chairman*.

And now come Siegel Copel, State's attorney of Saline county, and Choisser, Whitley & Choisser, attorneys for the relator, and also comes the Cleveland, Cincinnati, Chicago & St. Louis Railway Company and enter their appearance herein. And it appearing to the commission that heretofore at the September term, A. D. 1900, of the circuit court of Saline county, in the State of Illinois, the said relator brought his said action against the said defendant railroad company to recover certain penalties for alleged discriminations on the line of said railroad between Cairo, Ill., and Danville, Ill., and particularly discriminations alleged to have occurred in charging a higher rate upon hard wood lumber from the station of Harrisburg, Ill., than was charged and received for the same product going in the same direction from Cairo, Ill., and being a longer distance by about seventy (70) miles.

And it further appears to the commission that the said railroad company does not admit that it has been guilty of unjust discriminations, but claims that the difference in the rate charged between Cairo, Ill., and points north of Cairo is not unjust discrimination. Still in order to avoid all controversies with reference to the discriminations charged said railroad company has agreed with the said relator and his attorneys representing the People of the State of Illinois in said suit and consent to a judgment of two thousand (2,000) dollars in full of all alleged discriminations or extortions, and of all claims and charges of extortion and discriminations under the Illinois statutes at any and all of its stations on the line of the Cairo division of said railroad company between Cairo and Danville, Ill.

It further appears to the commission that said suit was brought without the authority and the consent of the said Railroad and Warehouse Commission.

It further appears to the commission that the original declaration filed in said cause does not sufficiently set up the charges of extortion and discrimination for which recovery is sought to be had.

It is therefore ordered that said relator, Siegel Copel, State's attorney of Saline county, and the said Choisser, Whitley & Choisser, attorneys for said relator, are authorized by the said commission to file an amended declaration in said cause sufficiently setting forth such items of extortion and discrimination for which recovery might be had.

It is further ordered by the Railroad and Warehouse Commission, and consent is hereby given by said Railroad and Warehouse Commission that said cause of action be settled by an entry of a judgment therein against the said Cleveland, Cincinnati, Chicago & St. Louis Railway

Company for the sum of two thousand (2,000) dollars in full of all penalties arising or accruing by reason of any of the alleged charges of discrimination or extortion set forth in said amended declaration and in full of all charges and claims for extortion and discrimination occurring on the said Cairo division of the said Cleveland, Cincinnati, Chicago & St. Louis Railway Company up and to the filing of such amended declaration.

It is further ordered by said commission that all attorneys' fees to the attorneys for said relator in said cause of action shall in no wise be charged to the Railroad and Warehouse Commission or any claim presented against the said Railroad and Warehouse Commission for the services of such attorneys.

Dated at Springfield, Ill., this 8th day of January, A. D. 1901.

D. H. CURRY & Co.

V.

THE ILLINOIS CENTRAL RAILROAD CO.

On Dec. 29, 1902, D. H. Curry & Co. filed in the office of the Railroad and Warehouse Commission, complaint against the Illinois Central R. R. Co., for an unjust discrimination against the said D. H. Curry, or the firm of D. H. Curry & Co., in the distribution of grain cars at the town of Mason City, Mason county, Ill., alleging that they were an elevator company, buying and shipping grain from Mason City, and that there was a company called the Farmers' Grain & Coal Co. of Mason City, who were also engaged in the same line of business, at the same place and that the Illinois Central R. R. Co. furnished a large number of cars to the Farmers' Grain & Coal Co. to ship grain in from Mason City and neglected and refused to furnish cars to the said D. H. Curry & Co. to be used for the same purpose.

The defendant, the Illinois Central R. R. Co. filed its answer Jan. 15, 1903, denying that they unlawfully discriminated against petitioners, D. H. Curry & Co., in the distribution of cars. Said railroad company admitted that they had furnished a large number of cars to the Farmers' Grain & Coal Co. and had furnished very few cars to D. H. Curry & Co., but they defended their action in so doing by alleging that the Farmers' Grain & Coal Co.'s elevator was located on the ground of the Illinois Central R. R. Co., adjacent to the side track of the said railroad company and that the elevator of D. H. Curry & Co. were located on the right of way and adjacent to the side tracks of the Chicago & Alton Ry. Co. and on the further ground that D. H. Curry & Co. had gone into a conspiracy with a number of other grain men or grain companies to prevent the said Farmers' Grain & Coal Co. from getting cars to ship their grain and to prevent commission men and buyers at other markets from buying or handling grain of the Farmers' Elevator com-

panies and for that reason, the fact that they furnished a great number of cars to the Farmers' Grain & Coal Co. and refused or neglected to furnish cars to D. H. Curry & Co. was not an unlawful discrimination.

The case was set for hearing on Jan. 29, 1903, at the office of the Railroad and Warehouse Commission, in Springfield, Ill., and the parties appeared with a large number of witnesses on each side. The proof shows that for a good many years past D. H. Curry & Co. had been engaged in the elevator business at Mason City; that Mason City is a junction of the Illinois Central R. R. and the Chicago & Alton Ry.; that the elevators of D. H. Curry & Co. were located along the line of the Chicago & Alton Ry. and that the Farmers' Grain & Coal Co. is located on the line of the Illinois Central R. R.; that at certain times in the year it was a great advantage to a shipper to be able to ship their grain over the Illinois Central R. R. and for that reason D. H. Curry & Co. applied for cars and were willing, if cars were furnished them, to haul their grain by teams from their elevators to the Illinois Central side tracks and load it into the cars from wagons and that they had on very many different times done that, but that since November, 1902, they had been unable to secure any cars and although the market for their grain at places where they could ship over the Illinois Central R. R. was from 1 to 3 cents a bushel higher than at markets where they could ship over the Chicago & Alton Ry., they were unable to get cars to ship over the Illinois Central R. R.

The evidence also shows that for many years prior to December, 1900, at the time the Farmers' Grain & Coal Co. began business at Mason City, D. H. Curry & Co. had been in business at Mason City, and that before that time grain sold for from 2 to 3 cents a bushel less at Mason City than at other markets in that vicinity, but that after the Farmers' Grain & Coal Co. began business there grain brought from $\frac{1}{2}$ to 2 cents a bushel more at Mason City than it did at other markets in that vicinity.

The evidence also shows that after the controversy came up about the distribution of cars, that a number of commission companies in the city of Chicago, where the Farmers' Grain & Coal Co. were in the habit of shipping a large amount of grain, and grain buyers at Decatur and other places, where they had shipped some grain, after doing business a short time with the Farmers' Grain & Coal Co., would notify them, the Farmers' Grain & Coal Co., that they were unable to continue to handle their grain, and asked them to ship to some other person or company. This is true in a number of instances. The writers of such letters were witnesses in this hearing, and their excuse for writing such letters and ceasing to do business with the Farmers' Grain & Coal Co. at Mason City was that the Illinois Grain Dealers' Association, an association of which they were members, had, through its special agent, one, A. W. Lloyd, advised them not to handle the grain of the farmers' elevators, and that he had led them to believe that anyone who handled the grain of farmers' elevators would not get to handle the grain of any of the members of the Grain Dealers' Association, and in almost every instance, as will be seen by copies of letters which are made a part

of this opinion, they refused to do business with the farmers' elevator companies for the reason that they thought it would be more advantageous to them to handle the business of the members of the Illinois Grain Dealers' Association than it would to handle the business of the farmers' elevators, and that they could not do both.

The following are copies of letters, which are made a part of this opinion:

CHICAGO, ILL., Nov. 22, 1902.

Farmers' Grain & Coal Co., Mason City, Ill.:

DEAR SIRs—For some time past we have been considering the advisability of asking you to change your account to some other house. As you know, we are dependent upon the country grain shippers for a living, and in times past have operated country elevators ourselves. We have, therefore, decided not to solicit or handle any grain except from the regular country grain shippers. Hence, we have come to the conclusion that, although our past business has been satisfactory, it is to our financial advantage to have you transfer your account to some other house. We will, therefore, collect for all the grain we have sold for you and get account sales to you just as soon as possible.

Yours very truly,

NASH, W. & Co.,

Baker.

CHICAGO, ILL., Dec. 1, 1902.

Farmers' Grain & Elevator Co., Mason City, Ill.:

GENTLEMEN—Our representative, Mr. White, has reported having had a very pleasant visit with you. In reply to your inquiry whether we would take your account will say, that after considering the matter very carefully we have come to the conclusion that if you will join the Illinois Grain Dealers' Association (which we are satisfied will be to your interest as well as ours) we will be pleased to take your account and handle your shipments to your best possible advantage. Are confident that if you join the association and work in harmony with your competitors the ill-feeling now existing will not be so bitter. Have written Mr. Mowry, secretary of the association, the stand we have taken and believe the sooner you send him your application the better it will be for all concerned.

As to the action of today's markets, we will refer you to enclosed market letter and price current. Hoping to hear in the near future that you have joined our ranks, we remain,

Yours truly,

H. HEMMELGARN & Co.

CHICAGO, ILL., Dec. 15, 1902.

Farmers' Grain & Coal Co., Mason City, Ill.:

DEAR SIRs—In talking with my partners since seeing you yesterday we have decided that inasmuch as we are members of the Grain Dealers'

Association, and have subscribed to the rules, we do not feel that it would be honorable to solicit your business and regret very much to have to inform you that we cannot do so.

Very truly yours,

WARNER & WILBUR,

Per J. H. Warner.

CHICAGO, ILL., Dec. 20, 1902.

Farmers' Grain & Coal Co., Mason City, Ill.:

GENTLEMEN—We are very much pleased to receive your favor of yesterday advising shipment of two cars of corn, which will have our best attention on arrival. We are pleased to get this start with you and we hope our sales and manner of handling this consignment will induce a long and pleasant business between us. Our cash corn market was stronger and prices were slightly higher than yesterday. Some report the market as slightly lower but our sales are certainly better than those made for the same quality of corn yesterday. Our cash oat market was also strong and about a quarter cent higher. Samples were in brisk demand. We are firm believers in higher prices for both cash oats and May future. Thanking you for this first shipment, we remain.

Sincerely yours,

Dic. E. W. B.

L. H. MANSON & Co.

CHICAGO, ILL., Jan. 6, 1903.

Farmers' Grain & Coal Co., Mason City, Ill.:

GENTLEMEN—For financial reasons we have decided that we cannot accept any more of your business and therefore write you accordingly.

Yours very truly,

FYFE, MANSON & Co.

MASON CITY, ILL., Jan. 7, 1903.

Fyfe, Manson & Co., Chicago, Ill.:

GENTLEMEN—Yours of the 6th received. Please advise what you mean by refusing our business for financial reasons. Is our account with you not satisfactory, or do you think we are not a safe house to do business with, when we are backed by a million or more money? Would thank you very much for an explanation at once.

Respectfully,

FARMERS' GRAIN & COAL Co.,

Per J. A. McCreary.

CHICAGO, ILL., Jan. 9, 1903.

Farmers' Grain & Coal Co., Mason City, Ill.:

GENTLEMEN—We have your favor of the 7th inst., and in reply to same will state that we have no doubt whatever but what your firm is perfectly responsible and good financially for anything that you would do but we have other interests that conflict doing business with you. Enclosed find account sales for the car corn No. 22,660, showing net proceeds of \$536.11. This car closes up all the business we have had from

you and we herewith enclose check for \$160.30 to balance account. Thanking you for past favors and hoping you will call and see us when in the city, we are

Dic. L. H. M.

Sincerely yours,

FYFE, MANSON & Co.

DECATUR, ILL., Jan. 9, 1903.

Mason City Farmers' Grain & Coal Co., Mason City, Ill.:

GENTLEMEN—Referring to our conversation by 'phone today, there will be a meeting at Decatur next week for the purpose of talking over some matters of interest and we think it would be a good plan for you to confer with the managers of the New Holland and Easton Farmers' Companies and have your three managers present here and with full power to act for your companies. If you come without power to act it will be a waste of time and expense. The purpose is to adjust all differences between you and the regular shippers in your territory. It is not the purpose of arranging matters so that the farmers will be treated unfairly but in such a way that there will be no injustice to the farmer nor to the regular dealer who has his money invested in the grain business. Some plan must be adopted that will provide for each shipper so that he will be given his share of the business at a reasonable margin of profit. If you can arrange to be present with the authority suggested, we will notify you of the time of the meeting.

Yours truly,

SUFFERN, HUNT & Co.

HAVANA, ILL., Jan. 14, 1903.

Mess. Suffern, Hunt & Co., Decatur, Ill.:

DEAR SIRs—We will say that a number of the dealers flatly refuse to make any terms with the Farmers' Elevator combines at Easton, Mason City and New Holland which you have suggested. We thank you for your efforts in our behalf and can have no objections you seeking to establish your previous business relations with the parties at the above named stations.

Respectfully,

McFADDEN & Co.

DECATUR, ILL., Jan. 15, 1903.

Mason City Farmers' Grain Co., Mason City, Ill.:

GENTLEMEN—We have been unable to get your opposers to agree to give you a hearing, so we hand you bid herewith. We will meet a committee here tomorrow and will insist upon fair treatment.

Yours truly,

SUFFERN, HUNT & Co.

From the evidence shown, we are led to believe that there was some kind of an understanding between the complainant, D. H. Curry & Co. and members of the Illinois Grain Dealers' Association; that the members of that association, or parties handling the grain of the members of that association, were not to handle any of the grain of the Farmers' elevators. The evidence of Wm. H. Suffern, of Decatur, who was a witness for the defense shows that there was an objection by members of

the Illinois Grain Dealers' Association to his firm, Suffern, Hunt & Co., of Decatur, sending bids or buying grain from the Farmers' elevator and that he, Mr. Suffern, of his own motion, undertook to settle that difference and after so doing wrote several letters back and forth between his firm, the Farmers' Grain & Coal Co. at Mason City and McFadden & Co., a firm of grain dealers at Havana, Ill., near Mason City, and it is admitted by Mr. Curry that within a very few minutes after Mr. McFadden received the letter from Mr. Suffern, asking that some adjustment be made by which their firm could send bids to the Farmers' Grain & Coal Co., at Mason City and just prior to the letter written by Suffern, Hunt & Co., to the Farmers' Grain & Coal Co. stating that it would be of no use for them to come to Decatur to try and adjust their differences, that McFadden had telephoned Mr. Curry all about the correspondence with Suffern, Hunt & Co.

While this is not the strongest evidence that Mr. Curry was a party to the attempt to prevent members of the Illinois Grain Dealers' Association and commission men handling their business from doing business with the Farmers' Grain & Coal Co., it is sufficient to show that Mr. Curry knew what was going on and while it may not be a legal defense to the Illinois Central Railroad Co. in not delivering cars to D. H. Curry & Co., it shows very conclusively that Mr. Curry was willing that anything should be done to prevent the Farmers' Grain & Coal Co. from having a market for its grain and he himself refusing to agree to a conference between the interested parties by which a settlement could be made that would allow the firm of Suffern, Hunt & Co. to send bids to and buy grain from the Farmers' Grain & Coal Co.

The law governing the transportation of grain is as follows: "That every railroad corporation, chartered by or organized under the laws of this State, or doing business within the limits of the same, when desired by any person wishing to ship any grain over its road, shall receive and transport such grain in bulk, within a reasonable time, and load the same either upon its track at its depot or in any warehouse adjoining its track or side track, without distinction, discrimination or favor between one shipper and another, and without distinction or discrimination as to the manner in which such grain is offered to it for transportation or as to the person, warehouse or place to whom or to which it may be consigned."

From this it will be seen that where persons apply for cars to ship grain that it makes no difference whether he is a buyer or a farmer desiring to ship his own grain; that he is entitled to the same rights with reference to the receipt of cars in shipment of grain, but we think the rule should be that where elevators are located along different lines of roads at junction points, that in the distribution of cars, each railroad should take into consideration the number of cars furnished to the elevator on the other line of road by the railroad on whose line such elevator is situated as well as the number of cars furnished to such elevators by their road, and should distribute the cars equitably according to the whole number of cars received by all roads at such point, in accordance with the amount of grain to be shipped by the different

shippers or persons desiring to ship. That seems to be the custom at many junction points within the State, and in our opinion is the proper rule.

It is therefore ordered by the commission that the Illinois Central Railroad Company hereafter distribute cars to D. H. Curry & Co., the Farmers' Grain & Coal Co. and to the F. M. Hubbard Elevator Co., in accordance with the foregoing rule, and that other persons who desire to ship be treated in the same way.

JAMES S. NEVILLE, *Chairman*;

ARTHUR L. FRENCH, *Commissioner*.

Springfield, Ill., Apr. 8, 1903.

THE ALTON LIME & CEMENT COMPANY

V.

THE CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY.

Appearances—J. F. McGinnis, for complainant; H. L. Child, for defendant.

This was a complaint filed by the Alton Lime & Cement Company against the Chicago, Peoria & St. Louis Railway Company, for overcharges for switching stone from their quarry to the transfer switch and delivering it to the other railroads in the city of Alton.

It was admitted by the said railroad company that the quarry was within three miles of the transfer switch where the cars were delivered to the other railroad companies, but they sought to defend their action by showing that the cars now used were much larger than the cars that were in use at the time of the adoption of the rule. This we do not think is a defense. The rule is still in force and the charging of more than two dollars (\$2.00) for the service rendered as shown by the evidence in this case, was a clear violation of Rule No. 23 and in our opinion it was an overcharge which they had no authority to make.

It is therefore ordered by the commission that the Chicago, Peoria & St. Louis Railway Company, by charging and collecting from the complainant more than two dollars (\$2.00) a car for switching cars from their quarry to the transfer switch and delivering to other railroad companies, which is only about half a mile, have made an unjust charge and are guilty of extortion.

Springfield, Ill., Nov. 11, 1905.

JAMES S. NEVILLE, *Chairman*;

ARTHUR L. FRENCH, *Commissioner*.

A. J. WEBER

v.

ILLINOIS CENTRAL RAILROAD COMPANY.

Appearances—D. T. Upchurch, for petitioner; John G. Drennan, for respondent.

The petition in this case was filed Apr. 23, 1906, and alleges that the petitioner is the owner and proprietor of a steam flour mill located on a side track of the respondent at Galatia, Ill.; that between Jan. 6, 1905, and Mar. 19, 1906, the petitioner was compelled to pay to the respondent for switching twelve carloads of coal from the mine of the Galatia Coal Company to the petitioner's mill, a distance of less than five hundred yards, a sum in excess of \$2.00 per car, and it is claimed that the service rendered was a switching service within the meaning of Rule 23, and that because of such charge the respondent is guilty of extortion.

The answer of the respondent was filed on Apr. 25, 1906, and consists of a general denial of the charges in the petition.

The case came on for hearing before the commission at its office in Springfield on the 15th day of May, 1906. After hearing the evidence in the case and the arguments of counsel, the case was taken under advisement and leave was granted to the parties to file written briefs. No opinion was filed during the lifetime of the late chairman of the commission, Honorable James S. Neville, and because of a change in the personnel of the commission the case was re-argued at the regular December, 1906 meeting and submitted on the evidence taken at the former hearing.

The undisputed facts in the case are as follows: The petitioner owns and operates a flour mill adjacent to the respondent's sidetracks at Galatia, Ill. About five hundred yards west of this flour mill and adjacent to the tracks of the respondent is located the coal mine of the Galatia Coal Company. During the period of about one year prior to the filing of the petition in this case the petitioner purchased from the Galatia Coal Company twelve carloads of coal for use at his flour mill. For furnishing the cars and transporting this coal from the coal mine to the flour mill the respondent charged the petitioner for one of the cars \$5.00, for five of the cars \$7.00, and for six of the cars \$7.50 each. There is no dispute between the parties as to the facts, but it is claimed by the respondent that this movement of these cars was not a switching movement within the meaning of Rule 23, but was in fact a "transportation" or "haul" and that it was entitled to charge for such service the maximum allowed by the "Schedule of Maximum Freight Rates" then in force, which was twenty-five cents per ton for hauling coal two miles or less.

Rule 23, at the time when these transactions occurred, read as follows:

"The reasonable maximum rate for switching loaded cars for distances not exceeding three miles shall be \$2.00 per car. Switching includes the hauling of loaded cars from the station yards, side tracks, elevators or warehouses to the junction of other railroads when not billed from stations on its own road to said junctions and from junctions of other railroads to the stations, side tracks, elevators and warehouses situated on the tracks owned or controlled by the railroad company doing the switching; it is that transfer charge ordinarily made for moving loaded cars for short distances for which no regular way-bill is made and which do not move between two regularly established stations on the same road."

The evidence discloses that the mine of the Galatia Coal Company was not located at any regularly established station and in the movement of these cars no regular way-bills were made. The bills presented by the respondent for this service were the ordinary switching bills.

A number of cases, where the facts appear to be similar to those disclosed by the evidence in this case, have heretofore been passed upon by the commission, and it has been held that the service in question was a "switching service" within Rule 23 above quoted.

It is, however, contended by respondent, that Rule 23 has no application whatever to this service; that such rule applies only in cases where there necessarily preceded or succeeded such service the payment of freight for transportation over some line of railway, and the case of *Dixon v. Central of Georgia Railway Company*, 110 Ga., 173, is, among others, cited as an authority on this point. In that case the rule of the Railroad Commission did not in any way attempt to define what is meant by a "switching" charge, and the court was, of course, at liberty to hear testimony as to the meaning of that term as it was used in reference to railroad transportation. From a consideration of such evidence the court found that a "switching" service applied only in cases where there necessarily preceded or succeeded such service the payment of freight for a regular transportation service.

Rule 23 of this commission, however, defines what is meant by a "switching" charge. Among other things it is "that transfer charge ordinarily made for moving loaded cars for short distances for which no regular way-bill is made and which do not move between two regularly established stations on the same road." The evidence in this case brings it squarely within this definition of "switching."

This commission, by virtue of the provisions of the statute, has authority to establish reasonable maximum rates for switching and for the transportation of freight. The rules establishing such rates, when adopted, are binding, not only upon the railroad companies, but upon their patrons and are equally binding upon this commission until such time as they are altered or amended. Such being the case, we are not at liberty to disregard Rule 23 nor the definition of switching as therein contained.

But it is further insisted by respondent that by making two tariffs for a haul of two miles or under, one for "hauling" freight and the

other for "switching," the commission necessarily recognizes that for such distance there may be two classes of service for which a different charge may be made.

This is undoubtedly true. There may be a regular transportation or haul for a distance of two miles or under when such haul is between two regularly established stations, and where a regular way-bill is made. It is probably true that there are few instances where the schedule of maximum freight rates would apply for such short distances, but where it does apply the rate allowed by the regular distance tariff may be charged.

On the whole case we are of opinion that the service rendered was clearly within Rule 23 and, therefore, was a switching movement.

Dated at Springfield, Ill., this 4th day of December, A. D. 1906.

ARTHUR L. FRENCH, *Commissioner*;

W. H. BOYS, *Commissioner*.

GALESVILLE GRAIN AND COAL COMPANY

V.

WABASH RAILROAD COMPANY.

Appearances—Mr. F. M. Shonkwiler and Mr. James Hicks, for petitioner; Mr. N. S. Brown, for respondent.

It is alleged in the complaint filed in this cause, that the petitioner is a corporation engaged in buying and shipping grain at the unincorporated town of Galesville, in the county of Piatt; that for more than a year last past there have been three grain elevators in use at said town of Galesville, all of which are located upon the right-of-way of respondent, the Wabash Railroad Company; that complainant owns and operates an elevator of about 40,000 bushels capacity, and that Patrick H. Hayes and John Hayes have leased, and since the first of January, 1907, have operated the other two elevators located at Galesville, one of them having a capacity of about 5,000 bushels and the other having a capacity of from 10,000 to 12,000 bushels; that Patrick H. Hayes and John Hayes are doing business under the firm name and style of Hayes Brothers, and that they are in truth and in fact a single firm; that in the distribution of grain cars among the dealers along the line of its road the respondent has adopted a rule requiring their agents to distribute the cars equally between the different firms at each station, regardless of the number of elevators operated by each firm, or the capacity of the same; that in the distribution of grain cars the agent of the respondent at Galesville persists in treating the firm of Hayes Brothers as two separate and distinct firms, and consequently gives to them twice as many cars as are given to complainant, and that in thus dividing the grain cars available for the shipment of grain from said station the respondent has unlawfully discriminated against the complainant.

The evidence in the case shows beyond a shadow of a doubt that Patrick H. Hayes and John Hayes prior to the hearing, were doing business under the firm name and style of Hayes Brothers; that one of the partners kept the books of the concern and attended to the weighing of grain, while the other attended to the outside work; that all grain was paid for by checks signed by Hayes Brothers and drawn on the First National Bank of Monticello, Ill., where an account was kept in the name of Hayes Brothers; that no effort was made by the members of the firm to conceal from any of their customers the fact that they were, prior to the hearing in this case, doing business as a single firm, under the name of Hayes Brothers.

It is also disclosed by the evidence that in their dealings with the agent of the respondent at Galesville, each of the brothers placed orders for cars in their individual names, and that all shipments made over the respondent's road were in the name of one or the other of the brothers, and that they represented to such agent that each of them was doing business on his individual account, and consequently claimed that each of them was entitled to his pro rata share of the grain cars available for shipping grain from said station.

The agent of the defendant at Galesville testified that both Patrick H. Hayes and John Hayes had represented to him that they were not doing business as a firm, but that each of them was doing business on his individual account and that consequently, he had in accordance with the rules of the respondent regulating the distribution of grain cars, given to Patrick H. Hayes one-third of all grain cars received, to John Hayes one-third of such cars and to the complainant one-third of such cars.

We are impressed with the idea that if the agent of the respondent was deceived by these misrepresentations of Hayes Brothers, he was the only person, so far as the evidence discloses, who was misled by their statements, and we are inclined to the belief that the agent of the respondent willfully discriminated against the complainant in the distribution of cars, because we are unable to find from the evidence offered at the hearing that there was or is the slightest excuse for the agent not knowing the exact condition of affairs.

After the filing of the complaint in this cause the Hayes Brothers went through the outward form of dissolving the partnership theretofore existing, but the evidence as to the *bona fides* of this pretended dissolution was such as to leave clearly upon our minds the impression that it was a dissolution in form only and not in fact.

It is contended by counsel for respondent that this commission has no jurisdiction over the subject matter of this complaint, and that the same ought to be dismissed. It is not necessary in this case to decide whether or not the commission has power to prescribe a rule for the distribution of cars and compel the observance of that rule by the railroad companies, and in this case we do not wish to be understood as either approving or disapproving of the rule adopted by the respondent. For the purpose of this case we assume that the rule which it has adopted is a reasonable and fair one. We think that it is within the

power of this commission to inquire into complaints charging a discrimination, either in rates or the distribution of cars, or any other matters where the rights and interests of shippers are involved. As we have above said, for the purposes of this case we assume that the rule adopted by the respondent company is a just and fair one, but it is the duty of the company to carry out that rule in good faith and to treat all of its patrons justly and fairly where they are doing business under the same conditions.

It was shown upon the hearing of this cause that from January to July, 1907, both inclusive, the respondent furnished to the complainant a total of eighty-three (83) cars; that it furnished during the same period to Patrick H. Hayes thirty (30) cars and to John Hayes nineteen (19) cars, making a total of forty-nine (49) cars furnished to Hayes Brothers, and it is claimed, that even though the commission has jurisdiction of the subject matter, the evidence utterly fails to show any discrimination against the complainant.

It was also shown at the hearing that the complainant did a larger business than the Hayes Brothers and that during the period named took all of the cars it could obtain from the agent of the respondent; that during such period, or a portion thereof, Patrick H. Hayes did not order any cars at all, and the same is true of John Hayes. The mere fact that during the seven months from January to July, inclusive, the complainant was furnished a larger number of cars than was furnished to Patrick H. Hayes and John Hayes jointly, does not, under the circumstances disclosed, show that the complainant was not discriminated against. The testimony of the agent of the respondent was that when the three parties named wanted cars at the same time the cars were distributed equally between them, and in this distribution of cars we think the complainant was treated unfairly.

It will not do to say unqualifiedly that the agent of the respondent at Galesville had a right to assume that the statements of Patrick H. Hayes and John Hayes to him were true. It may be that he was justified in assuming their statements to be correct until he was made aware that they were contrary to the facts. Complaints were repeatedly made to the agent on account of his method of distributing cars, and he was repeatedly told that Patrick H. Hayes and John Hayes constituted a single firm. The outward evidences of the truth of this statement were so apparent that only the grossest negligence or unfairness on the part of the agent could leave him in ignorance of the real facts.

It is our opinion that complainant fully and clearly established the charges made in its complaint and that the respondent has been guilty of wilful discrimination against the complainant in the distribution of grain cars.

Dated this 3d day of December, A. D. 1907.

W. H. BOYS, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

IN THE MATTER OF THE PETITION OF THE ILLINOIS CENTRAL R. R. CO., BALTIMORE AND OHIO SOUTHWESTERN R. R. CO., AND THE SOUTHERN RAILWAY CO., AT THE MEETING OF THE COMMISSIONERS HELD AUG. 8, 1907.

Opinion of the commission in the matter of their jurisdiction over switching, as delivered by the chairman at the meeting in Chicago, Aug. 8, 1907:

Our understanding is that whatever power the commission has is conferred by this section of the statute, section 8 of the Extortion Act, which reads in part as follows:

"The Railroad and Warehouse Commissioners are hereby directed to make, for each of the railroad corporations doing business in this State, as soon as practicable, a schedule of reasonable maximum rates of charges, for the transportation of passengers and freights, and cars of each of said railroads" and then the section authorizes such changes to be made from time to time as may be necessary.

Our idea is that that section confers power on the commission to fix maximum rates for the transportation of cars, and the transportation of cars means any movement of cars from one point to another; whether it is one hundred miles, or whether it is one hundred feet, it is a movement just the same; and consequently if our interpretation is correct that gives us complete power to fix maximum charges in all movements of cars. That would include what we generally understand to be switching cars from one point to another within switching limits, or within a town, or short distances; and if we are correct in that conclusion, then necessarily we have a right to define the particular service that we are fixing a maximum charge for. It seems to us to be immaterial what we call it. If we define a particular service and say the maximum charge for that service shall be so much; another service, we define it, give it a name, and the name is not material, and say the maximum charge for that service shall be so much.

Now, if we are correct in that, we dispose of the two first questions submitted. The first one is as to the power of the Railroad and Warehouse Commission to define what constitutes switching, and second the power of the Railroad and Warehouse Commission to fix and define the switching limits. If we have the power to fix the maximum charge for switching, as we understand the term generally, we undoubtedly have the power to say that for a switch of three miles the maximum charge shall be so and so and for five miles it may be a greater amount.

The third question submitted is as to the power of the Railroad and Warehouse Commission to establish joint rates for switching. It is claimed by Mr. Mayer in his brief that we have the power to establish joint rates; that is denied by the representatives of the railroad companies. No authorities have been cited on either side and we have not had time to make the investigation on that point that we desire to make. and do not care at this time to express any opinion. In the reply brief filed by Mr. Mayer he takes the position, as we understand him, that the

commission has the right to compel a railroad company to absorb switching charges, that is to say, that freight may be delivered to one railroad in Chicago to be delivered to another and be transported by the latter road, and that we have a right to say that the first road must either look to the road making the haul for its compensation, or do the work without compensation. We do not think that is right. We do not think we have that power. A drayman, under the decisions, is a common carrier as well as a railroad. One might as well call a drayman to his store to get a box and take it to the C., B. & Q. Ry. and collect the charges from the C., B. & Q. Ry. It seems to us that is so, but on the general question submitted as to the right to fix the maximum switching charges, which is not disputed, the right to define the service which we intend to cover by that, we think we have that power, and that being true I presume it will be necessary to fix a time to hear evidence as to what the rule shall be and the rates to be fixed.

IN THE MATTER OF THE PETITION OF THE ILLINOIS CENTRAL RAILROAD COMPANY, ET AL CONCERNING MODIFICATION OF RULE No. 23.

The petition in the above entitled cause has been under consideration for some months. Much evidence has been introduced by the railroads as well as by the shippers. The commission has been favored with oral arguments and briefs prepared and submitted by able counsel representing all of the parties interested. We have carefully considered all of the evidence submitted as well as the arguments of counsel and have arrived at the conclusion that Rule 23 should be amended.

It is therefore ordered and decided that Rule No. 23 of the Illinois Commissioners' Schedule of Maximum Freight Rates and Classification No. 10 be amended so as to read as follows:

"RULE 23.

"It is hereby declared to be the duty of all railroad companies in this State, on request, to provide the necessary equipment and perform the switching service herein enumerated upon being paid or tendered the charges therefor as herein fixed.

"SWITCHING LIMITS.

"The switching limits of each and every town, city and village in this State, into or through which one or more railroads are operated, shall include:

"(1) All sidetracks (including all team tracks used by the public in loading and unloading cars, and all private sidetracks) located within the yard limits of each railroad located therein;

"(2) All sidetracks (including all team tracks used by the public in loading and unloading cars, and all private sidetracks), located without the yard limits, but within short distances thereof;

- “(a) At points where there are no regularly established stations, or
- “(b) At points where no regular way-bill is made for the movement of cars from such points to such town, city or village, or
- “(c) At points to or from which switch engines or road engines ordinarily move without special orders and without being regularly scheduled on a time card.

“CONNECTING LINE SWITCHING.

“‘Connecting Line Switching’ is hereby defined to be:

“(1) The movement of a loaded car from any elevator, warehouse, industry or place of business located upon or adjoining any sidetrack, to any connecting railroad at a junction point, or,

“(2) The movement of a loaded car from any connecting railroad at a junction point to any elevator, warehouse, industry or place of business located upon or adjoining any sidetrack, or,

“(3) The movement of a loaded car from a connecting railroad at a junction point to a connecting railroad at another junction point.

“*Provided*, the point from and the point to which the car is moved are both within the switching limits of any town, city or village, as herein defined.

“INDUSTRIAL SWITCHING.

“‘Industrial Switching’ is hereby defined to be the movement of a loaded car from any elevator, warehouse, industry or place of business located upon or adjoining any sidetrack, or from any team track used by the public in loading or unloading cars, to another elevator, warehouse, industry or place of business located upon or adjoining any sidetrack, or to any team track used by the public in loading and unloading cars, where point of origin and destination are both within the switching limits of any town, city or village as herein defined, and are both on the line of a single railroad.

“The reasonable maximum rate for each railroad for ‘connecting line switching’ where the distance does not exceed three miles shall not exceed \$2.50 per car, and where the distance is more than three and does not exceed five miles shall not exceed \$3.00 per car, regardless of weight or contents, but in no case shall a car be loaded beyond its safe carrying capacity.

“The reasonable maximum rate for each railroad for ‘industrial switching’ where the distance does not exceed three miles shall not exceed \$4.00 per car, and where the distance is more than three and does not exceed five miles shall not exceed \$5.00 per car, regardless of weight or contents, but in no case shall a car be loaded in excess of its marked capacity plus 10 per cent; *provided*, the rate on grain between elevators, mills, malt houses, distilleries and sugar refineries shall not exceed 75 per cent of the above charges for ‘industrial switching.’

“The usual ‘free time,’ but not less than two days for loading and not less than two days for unloading shall be allowed all shippers and receivers of freight, and no per diem or other charge for the use or for the

movement of any loaded car or cars, in addition to the charge above provided for, shall be made against any consignor or consignee of freight during the time the car or cars are in transit or during the 'free time' above referred to. No additional charge shall be made for the necessary movement of an empty car preceding or succeeding a switching movement. In all cases where a car is loaded on or unloaded from a public team track, which is not immediately adjacent to the place of business or industry of the party loading or unloading such car, a sum not to exceed \$1.00 per car may be added to the above maximum rates for the use of such track.

"Distances under this rule shall be computed according to short line mileage of each road performing the service.

"Any tracks which any railroad company has the right, license or permission to use, operate or control shall be considered the tracks of such railroad company.

"The 'Illinois Commissioners' Schedule of Maximum Freight Rates' shall in no case apply to switching service within the switching limits of any town, city or village in this State.

"This rule shall not apply in any case where point of origin or destination is without the switching limits and the charge of switching service is covered by a through tariff from point of origin to destination, nor in any case where the charge is absorbed by the railroad or railroads interested, nor shall it apply to interstate commerce.

"This rule shall not apply to any city, town or village in this State where a special switching district has heretofore or may hereafter be established by the commission."

It is further ordered that said Rule No. 23 as amended be effective from and after the 1st day of October, A. D. 1908.

From the evidence submitted it is plainly apparent that the conditions in the so-called switching district of Chicago are so unlike those in the cities and villages outside of the city of Chicago, that Rule No. 23, as above amended should not apply, but that a separate rule applicable only to the switching district of Chicago should be adopted.

It is therefore ordered and decided that the switching district of Chicago as hereinafter described be established, and that the following rules, regulations and schedule of rates be and the same are hereby made applicable thereto:

CHICAGO SWITCHING DISTRICT.

"The 'Chicago Switching District' shall include all of the territory within the following boundary lines, to-wit:

"Commencing at the Illinois-Indiana State line at Lake Michigan, thence south along said State line to the intersection with the section line between sections seventeen (17) and twenty (20), is township thirty-six (36) north, range number fifteen (15) east of the third principal meridian, in Cook county, Illinois, thence west to a point of intersection with the main line of the Illinois Central Railway Company one mile south of Harvey, Ill., thence in a northwesterly direction,

parallel with and one mile southwest of the Chicago Terminal Transfer Company's tracks to a point on the main line of the Chicago, Rock Island and Pacific Railroad Company, one mile southwest of Blue Island, Ill., thence in a northwesterly direction parallel with and one mile west of the Indiana Harbor Belt Railroad Company's track to a point on the Chicago, Milwaukee and St. Paul Railroad Company's track one mile northwest of Franklin Park, Ill., thence northeast to a point on the Chicago, Milwaukee and St. Paul Railroad Company's track one mile northwest of Mayfair, Ill., thence northeast to the intersection of Lincoln st., Evanston, Ill., with the main line of the Milwaukee Division of the Chicago and Northwestern Railroad Company, thence east on Lincoln st. to the shore of Lake Michigan, thence in a southeasterly direction along the shore of Lake Michigan to the place of beginning.

"It is hereby declared to be the duty of all railroad companies in the Chicago switching district, on request, to provide the necessary equipment and perform the switching services herein enumerated upon being paid or tendered the charges therefor as herein fixed.

CONNECTING LINE SWITCHING.

"Connecting Line Switching is hereby defined to be:

"(1) The movement of a loaded car from any elevator, warehouse, industry, or place of business located upon or adjoining any sidetrack to any connecting railroad at a junction point, or,

"(2) The movement of a loaded car from any connecting railroad at a junction point to any elevator, warehouse, industry or place of business located upon or adjoining any sidetrack.

"Provided, the point from and the point to which the car moved are both within the switching limits of the Chicago switching district.

INTERMEDIATE SWITCHING.

"Intermediate Switching' is hereby defined to be the movement of a loaded car from a connecting railroad at a junction point to a connecting railroad at another junction point, where both junctions are within the Chicago district.

INDUSTRIAL SWITCHING.

"Industrial switching' is hereby defined to be the movement of a loaded car from any elevator, warehouse, industry or place of business located upon or adjoining any sidetrack to another elevator, warehouse, industry or place of business located upon or adjoining the same or another sidetrack; *provided*, the point of origin and destination are both within the switching limits of the Chicago switching district, and both on the line of a single railroad.

"The reasonable maximum rate for each railroad in the Chicago switching district for 'connecting line switching,' where the distance does not exceed five miles, shall not exceed \$4.00 per car, and where

the distance is more than five and does not exceed fifteen miles, shall not exceed \$4.50 per car, and where the distance is over fifteen miles shall not exceed \$5.00 per car, regardless of weight or contents, but in no case shall a car be loaded beyond its safe carrying capacity.

"Provided, the rate on grain from or to elevators, mills, malt houses, distilleries and sugar refineries, where the distance does not exceed five miles, shall not exceed \$3.00 per car, and where the distance is more than five and does not exceed fifteen miles, shall not exceed \$3.50 per car, and where the distance is over fifteen miles, shall not exceed \$4.00 per car.

"The reasonable maximum rate for each railroad in the Chicago switching district for 'intermediate switching' shall not exceed \$2.50 per car within the Chicago switching district.

"The reasonable maximum rate for each railroad in the Chicago switching district for 'industrial switching' where the distance does not exceed five miles, shall not exceed \$5.00 per car, and where the distance is more than five and does not exceed fifteen miles shall not exceed \$6.00 per car, and where the distance is over fifteen miles shall not exceed \$7.00 per car, regardless of weight or contents, but in no case shall a car be loaded in excess of its marked capacity plus 10 per cent.

"Provided, the rate on grain between elevators, mills, malt houses, distilleries and sugar refineries shall not exceed 75 per cent of the above charges for industrial switching.

"The usual 'free time,' but not less than two days for loading and not less than two days for unloading shall be allowed all shippers and receivers of freight, and no per diem or other charge for the use or for the movement of any loaded car or cars, in addition to the charge above provided for shall be made against any consignor or consignee of freight during the time the car or cars are in transit or during the 'free time' above referred to. No additional charge shall be made for the necessary movement of an empty car preceding or succeeding a switching movement.

"Distances under this rule shall be computed according to short line mileage of the road or roads performing the service.

"Any tracks which any railroad company has the right, license or permission to use, operate or control shall be considered the tracks of such railroad company.

"The 'Illinois Commissioners' Schedule of Maximum Freight Rates' shall in no case apply to switching service within the switching limits of the Chicago switching district.

"This rule shall not apply in any case where point of origin or destination is without the switching limits of the Chicago switching district and the charge for switching service is covered by a through tariff from point of origin to destination, nor in any case where the charge is absorbed by the railroad or railroads interested, nor shall it apply to interstate commerce."

It is further ordered and decided that the foregoing rules establishing and describing the switching district of Chicago and establishing the rules and schedules applicable thereto shall be in full force and effect from and after the 1st day of October, A. D. 1908.

Dated at Springfield, Ill., this 16th day of September, A. D. 1908.

W. H. BOYS, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

IN RE PETITION OF THE ILLINOIS CENTRAL RAILROAD COMPANY ET AL
CONCERNING MODIFICATION OF RULE No. 23.

And now on this 28th day of September, A. D. 1908 come the petitioners in the above entitled cause by their respective attorneys and move the commission to postpone the date upon which Rule No. 23 of the Illinois Commissioners' Schedule of Maximum Freight Rates and Classification No. 10, as amended by order of this commission, dated Sept. 16, 1908, shall become effective, and also to postpone the date when the order of this commission of Sept. 16, 1908, creating the Chicago switching district and establishing rules, regulations and rates for the same shall become effective and the attorney for the shippers interposing no objection, but expressly consenting to a postponement of thirty days.

It is therefore ordered and decided by the commission that the amendments to Rule No. 23 and the order creating the Chicago switching district and establishing rules, regulations and rates for the same, as promulgated by the order of this commission entered Sept. 16, 1908, shall become effective on and after the first day of November, A. D. 1908, instead of from and after the first day of October, A. D. 1908, as is in said order provided.

Dated at Chicago, Ill., this 28th day of September, A. D. 1908.

W. H. BOYS, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

ORDER OF THE COMMISSION.

WHEREAS, A petition has been filed with this commission by the railroads centering at East St. Louis, Ill., asking for the establishment of a special switching district; and,

WHEREAS, No hearing has yet been had on said petition; and,

WHEREAS, Such hearing is to be had in the near future;

It is Therefore Ordered and Decided, That Rule No. 23 of the Illinois Commissioners' Schedule of Reasonable Maximum Freight Rates, as contained in Classification No. 10, effective July 1, 1906, be and the same is hereby continued in full force and effect in the city of East St. Louis, Ill., until the further order of this commission.

Dated at Springfield, Ill., this 1st day of October, A. D. 1908.

W. H. BOYS, *Chairman*.

IN THE MATTER OF THE PETITION OF THE ILLINOIS CENTRAL RAILROAD
COMPANY ET AL CONCERNING MODIFICATION OF RULE No. 23.

WHEREAS, An error occurred in the description of the Chicago switching district as described in the order of this commission entered September 16, A. D. 1908, amending Rule No. 23 of the Illinois Commissioners' Schedule of Maximum Freight Rates and Classification No. 10;

Therefore it is Ordered, That the portion of said order describing the Chicago switching district be amended so as to read as follows:

The "Chicago Switching District" shall include all of the territory within the following boundary lines, to-wit:

Commencing at the Illinois-Indiana State line at Lake Michigan, thence south along said State line to the intersection with the section line between sections seventeen (17) and twenty (20), in township number thirty-six (36) north, range number fifteen (15) east of the Third Principal Meridian, in Cook county, Illinois, thence west to a point of intersection with the main line of the Illinois Central Railroad Company one mile south of Harvey, Ill., thence in a northwesterly direction, parallel with and one mile southwest of the Chicago Terminal Transfer Railroad Company's tracks to a point on the main line of the Chicago, Rock Island and Pacific Railroad Company, one mile southwest of Blue Island, Ill., thence in a northwesterly direction parallel with and one mile west of the Indiana Harbor Belt Railroad Company's track to a point on the Chicago, Milwaukee and St. Paul Railroad Company's track one mile northwest of Franklin Park, Ill., thence northeast to a point on the Chicago, Milwaukee and St. Paul Railway Company's track one mile northwest of Mayfair, Ill., thence northeast to the intersection of Lincoln st., Evanston, Ill., with the main line of the Milwaukee division of the Chicago and Northwestern Railroad Company, thence east on Lincoln st. to the shore of Lake Michigan, thence in a southeasterly direction along the shore of Lake Michigan to the place of beginning."

Dated at Springfield, Ill., this 23d day of December, A. D. 1908.

W. H. BOYS, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

PETER DAILEY

v.

TOLEDO, PEORIA & WESTERN RY. Co.

Appearances—For petitioner, Mr. F. A. Perkins; for respondent, Mr. W. S. Horton.

The petitioner in this case is a resident of the city of Canton, and is engaged in the retail coal business at that point. His coal yards are

adjacent to the tracks of the respondent and within a few hundred feet of the respondent's depot in Canton. The Eagle coal mine is located approximately two miles west of the respondent's depot at Canton and adjacent to the tracks of the respondent. At this point there is also located a brick yard and the place is designated as West Canton on the expense bills offered in evidence in this cause.

From the 25th day of October, 1906, up to and including the 25th day of March, 1908, the petitioner purchased from the Eagle mine one hundred and eighty-five carloads of coal, which coal was transported from the mines to the petitioner's place of business in Canton by the respondent. In each case the respondent charged a sum in excess of that authorized by Rule No. 23 of the Illinois Commissioner's Classification No. 10, and the total overcharge, if the services rendered were within the meaning of Rule No. 23, amounted to \$381.72.

The evidence disclosed the fact that the respondent does not maintain a regular station at West Canton. It has no station buildings at that point, does not employ an agent there, nor does it maintain any facilities for the handling of freight or passengers. None of its regular trains stop at West Canton. It does not receive freight at any of the stations on its line consigned to West Canton, nor does it receive freight at West Canton destined to other points on its line or elsewhere. On all coal or brick originating at West Canton and destined to other stations on its line the freight is billed from Canton and takes the Canton rate. Where coal is transported from the Eagle mine to Canton a way-bill is made out by the station agent at Canton, but this is done in order to conform with the accounting methods of the respondent, and the way-bill thus made cannot be considered "a regular way-bill" within the meaning of Rule No. 23.

The facts in this case bring it within the rule announced in the case of *Weber v. Illinois Central Railroad Company*, decided Dec. 4, 1906, *Southern Illinois Milling & Elevator Company v. Illinois Central Railroad Company*, decided Aug. 6, 1907, and numerous other cases.

We are therefore of opinion that the respondent is guilty of extortion in charging for the service rendered an amount in excess of that authorized to be charged under Rule No. 23.

Dated at Springfield, Ill., this 29th day of December, A. D. 1908.

W. H. BOYS, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

MICHAEL C. HAYES

V.

CHICAGO & NORTHWESTERN RAILWAY CO.

Appearances—For petitioner, Mr. Albert J. Norton; for respondent, Mr. Samuel A. Lynde.

Michael C. Hayes, the petitioner, is now and for many years past has been the owner of a tract of land consisting of about two hundred acres along the shore of Lake Michigan near Beach, Ill., a station on the Milwaukee division of the respondent's railroad, thirty-nine miles north of the city of Chicago. That portion of said tract of land bordering on the lake and extending from the water line westward for about one-quarter of a mile has upon its surface and to a considerable depth, a layer of good building sand. About the year 1888 the petitioner made an arrangement with the respondent which resulted in a switch track being constructed from Beach to petitioner's land in order to facilitate the loading and shipping of sand. It is not claimed by the petitioner that the rate charged him by the respondent for transporting sand from Beach to the city of Chicago, which is practically the only market open to him, is unreasonable, but on the other hand it is expressly admitted that such charge so made is a reasonable charge. The complaint of the petitioner seems to be based upon the fact that certain other firms and corporations engaged in the sand business in the city of Chicago, and who obtain their supply of sand from points along the southern shore of Lake Michigan, in the state of Indiana, are quoted such low rates by the railroad companies engaged in interstate business that the petitioner cannot compete with them in the Chicago market.

Inasmuch as this commission has no jurisdiction over the rates charged by railroads for the transportation of interstate commerce, and inasmuch as the petitioner admits that the rates charged him by the respondent are reasonable, the commission is powerless to grant the petitioner any relief, and therefore it is ordered that the petition be dismissed.

Dated at Springfield, Ill., this 29th day of December, A. D. 1908.

W. H. BOYS, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

CHRIST LANDBURG

V.

CHICAGO & EASTERN RAILROAD CO.

Appearances—For petitioner, Mr. James Turnock; for respondent, Mr. E. H. Seneff.

The respondent owns or controls a tract of land in the city of Chicago lying east of Butler st. and between Thirty-third and Thirty-fifth sts., upon which it has constructed twelve or fourteen switch tracks. For a number of years prior to the filing of the petition in this case the petitioner and one A. L. Jones were engaged in shipping manure from this part of the city over the road of the respondent. For the accommodation of these shippers, and perhaps others, the respondent caused to be constructed a switch track on the tract of land above referred to, parallel with and adjacent to Butler st., and extending from a point near Thirty-fourth st. to the south line of Thirty-third st. This track was used by petitioner and said Jones as a loading track for a number of years. Several years ago, the exact date not appearing from the evidence, the city council of the city of Chicago passed an ordinance prohibiting the loading of manure on cars at any point within the city of Chicago which was within three hundred feet of any dwelling house, without a permit from the Department of Health. The loading track provided by the railroad company was within three hundred feet of one or more dwelling houses, but both the respondent and the said Jones obtained permits from the Department of Health which authorized them to use the track in question for the purpose of loading manure.

After these permits had been in force for a number of years, and during the latter part of the month of July, 1908, the permits were revoked by the Department of Health.

The greater part of all of the switch tracks of the respondent located on the tract of land above described (with two exceptions), are within three hundred feet of one or more dwelling houses, consequently their use for the purpose of loading manure was within the prohibition of said ordinance. Of the two tracks in this yard which are available for the purpose of loading manure one is used by the respondent for repairing cars and cleaning engines, which use makes it not only inconvenient but impossible, in the orderly conduct of respondent's business, to use it for any other purpose. The other track is known as "Baker Brothers' switch," and extends north from Thirty-fifth st. to the south line of Thirty-third st. Baker Brothers are engaged in the coal business, and a number of years ago the respondent leased to them a strip of ground about eighty feet wide and extending south from the south line of Thirty-third st. approximately five hundred and fifty feet. "Baker Brothers' switch" extends through this strip of ground from south to north.

When the permits held by the petitioner and by A. L. Jones were revoked by the city authorities Jones communicated that fact to the officers of the respondent and requested them to furnish him some other place in the yard for loading purposes. He was advised by the company that the only track available for that purpose was that part of the "Baker Brothers' switch" which was south of the south end of the tract of land which had been leased to Baker Brothers, but that this track could not be used without their consent. Jones made satisfactory arrangements with Baker Brothers for the use of the switch track and then applied to the respondent to lease a strip of ground twenty-nine

feet wide and approximately two hundred feet long, adjacent to this track and extending south from the south end of the tract leased to Baker Brothers. The respondent thereupon leased to Jones such a strip of land, together with the right to construct a driveway from the same to Thirty-third st. After the execution of this lease Jones expended some six hundred dollars in preparing the driveway and in constructing a loading platform on the strip of land leased.

On Sept. 4, 1908, petitioner addressed a communication to the agent of respondent at Chicago in which he stated among other things: "Another dealer handling the same commodity in the same territory has been extended private track facilities and I write you to ascertain what steps are necessary for me to take in order to secure the same facilities as are extended to one of my competitors." The agent in replying to this communication stated, in substance, that the company had been trying to find a suitable location for petitioner in the yard, but had been unable to do so, and that until such time as the city authorities would issue to him a permit it would be impossible to take care of his business at that point.

After some further correspondence with various officers of the company the petitioner filed his complaint in this cause charging the respondent with unjust discrimination in that it had leased to his competitor a tract of ground and furnished him switch track facilities for loading manure, while it neglected and refused to furnish the same facilities to petitioner at the same point.

The evidence in this case clearly shows that the only available track in this yard for loading manure is that portion of the "Baker Brothers' switch" which is now being used by Jones, and this fact is practically admitted to be true by petitioner. It is also admitted that the respondent was acting in good faith when it leased to Jones the strip of ground in question, but it is insisted that inasmuch as the respondent has the right, upon sixty days' notice, to terminate the lease with Jones, it ought, under all the circumstances, to exercise its option in that regard and then give the petitioner the right, jointly with Jones, to use this portion of the switch for loading manure. We cannot agree with this contention for several reasons. In the first place it appears that this track was built for the especial use and accommodation of Baker Brothers, and under the contract existing between that firm and the respondent, the respondent has no power to permit others to use the track without their consent. It does not appear that the petitioner has ever obtained the consent of Baker Brothers to use this switch track, or any portion of it for the loading of manure. In the second place the evidence makes it quite plain that the two hundred feet of track used by Jones is reasonably necessary for the conduct of his own business at that point, and that the available space would not be sufficient to furnish loading facilities for both Jones and the petitioner.

As we have said, it is admitted that the respondent was acting in good faith when it leased the strip of ground and track in question to Jones, and that such leasing, so far as the respondent was concerned, was not made for the purpose of depriving the petitioner of an oppor-

tunity of loading manure in that particular yard. This being true, we know of no authority in the Statute giving the commission power to call upon the respondent to cancel the lease in question. That a railroad company has a right to permit a part of its right-of-way to be occupied by other parties with structures convenient for the receipt and delivery of freight, and that it may, even where it has additional land available for that purpose, refuse to grant like privileges to others, is fully established by the case of *Missouri Pacific Railroad Company v. Nebraska*, 164 U. S., 403.

In this case, however, it clearly appears that the respondent has no available ground in the yard in question, which it can lease to the petitioner, but it can only grant him the facilities which he requires by abrogating a lease which it has already, in good faith, entered into. We do not think the respondent should be required to do this, and therefore the petition is dismissed.

Dated at Springfield, Ill., this 29th day of December, A. D. 1908.

W. H. BOYS, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

IN THE MATTER OF THE PETITION OF THE APPLICATION OF THE INDIANA HARBOR BELT RAILROAD COMPANY TO BE EXEMPT FROM THE APPLICATION OF RULE 23 OF THE ILLINOIS SCHEDULE OF MAXIMUM FREIGHT RATES AND CLASSIFICATION No. 10, ADOPTED SEPT. 16, 1908, AND IN FORCE NOV. 1, 1908.

The above entitled cause coming on to be heard upon the petition filed herein and the evidence offered by the petitioner in support thereof and the arguments of counsel for the petitioner, no one appearing in opposition thereto, and it appearing to the commission upon the evidence and showing made by the said petitioner in said petition filed by it, and from the evidence offered in support thereof, that rule No. 23 of the Illinois Railroad and Warehouse Commission's schedule of maximum freight rates and classification No. 10, as amended by said commission on the 16th day of September, A. D. 1908, and in force by order of said commission on the 1st day of November, 1908, and as published in Supplement No. 10, to the Illinois Railroad and Warehouse Commission's Classification No. 10, as applied to the said petitioner, the Indiana Harbor Belt Railroad Company, appears from said showing and evidence to be inequitable and that said railroad company under the rates prescribed by said rule and the several provisions therein contained the petitioner from said showing appears to be unable to earn an adequate compensation in the matter of transporting freight upon and over its said road under the provisions of said rule and from such testimony and showing it appears to the commission that the petitioner is transporting freight at less than the actual cost incurred by said rail-

road for the transportation of said freight. And it thus appearing to the commission that said railroad company by complying with the provisions of said rule No. 23 is compelled to operate its said railroad at a loss;

And it further appearing to the commission that a number of the railroads in the State of Illinois have filed in the Federal Court a bill enjoining the said commission from enforcing said rule No. 23 against certain railroads in the State of Illinois, and it also appearing that said cause is still pending and undecided in the court in the State of Illinois, which litigation makes the application of said rule and its enforcement by said commission somewhat uncertain.

And the commission being fully advised in the premises, and after due consideration of all the questions involved.

It is therefore ordered and decreed by the commission that the said Indiana Harbor Belt Railroad shall be and is hereby eliminated from the provisions of said rule No. 23, adopted by this commission on the 16th day of September, 1908, and in force Nov. 1, 1908, and that the several rates, terms, and provisions of said rule shall have no application to the said Indiana Harbor Belt Railroad Company until the further order of this commission.

It is further ordered and decreed by this commission that the said Indiana Harbor Belt Railroad Company, the petitioner herein, shall be and is hereby placed under the operation of rule No. 23, known as old rule No. 23 and found in the Railroad and Warehouse Commission's classification No. 10, effective July 1, 1906; on page eight of said classification, and said Indiana Harbor Belt Railroad is classified as a railroad of Class "A."

By order of the commission, this date, Jan. 6, 1910.

ORVILLE F. BERRY, *Chairman.*

HARRIGAN BROTHERS

v.

WABASH RAILROAD COMPANY

AND

H. C. GOEBEL

v.

WABASH RAILROAD COMPANY.

(Cases consolidated for hearing by agreement.)

The complaints in the above entitled causes charge that the respondent, the Wabash Railroad Company, refuses to receive cars from the Chicago & Alton R. R. Co., the Chicago, Peoria & St. Louis Ry. Co., and the Chicago, Burlington & Quincy R. R. Co., consigned to Harrigan Brothers

or to Henry C. Goebel placed on the "Y" connecting the railroad of the respondent with the other railroads above mentioned, and a refusal to set said cars upon the house track at the places of business of the petitioners, which places of business are located on both the north and south sides of the right-of-way of said Wabash Railroad Company between West st. and Sandy st. in the city of Jacksonville; and the complaint further charges that the respondent company refuses to receive at the said "Y," from the above named companies, empty cars to be placed at the petitioner's place of business for loading, although the respondent company has continued to receive on said "Y" cars from said roads consigned to other shippers having business houses on the same tracks along its right-of-way in Jacksonville and has placed the same at such other shippers' places of business.

There is practically no controversy about the facts presented to the commission for its consideration. The evidence shows that there are several other business concerns located upon the same "Y" doing business in substantially the same manner as the petitioners herein. It is not contradicted by the respondent company that during the same period when they refused to switch the cars requested by the petitioners herein that the respondent company placed cars from other roads at Capps Mill, at the International Harvester Warehouse and at Swift's Warehouse, at Sweeney's Sand and Cement Yards, and at the Jacksonville Packing Company's plant.

It is contended by the respondent company that they are not required under the law to grant the request of the petitioners. First, for the reason that the Wabash Company has declared all of its side tracks located within the territory mentioned in the evidence to be public team tracks; second, that the commission have no jurisdiction to make an order in this case. It is also stated that the evidence shows that the petitioners had never paid the respondent company for such switching. This, we think, is an error. There could be no question but what the respondent company would have the right to make a reasonable charge as allowed by law for such switching, and that the petitioners would have to pay the same, and the evidence shows that the petitioners have always paid when requested to do so, but that for a number of years the switching charge had been absorbed by one of the companies and paid in that way.

Rule No. 23 of this commission very clearly and definitely settles the rights of all parties in the evidence in this case, and inasmuch as there is a proceeding pending in the Federal Court enjoining this commission from enforcing this particular rule at this time against the respondent company, it will be necessary to decide the matter upon other grounds. And we believe there is ample grounds outside of Rule No. 23 (which we do not undertake against the respondent company at this time to enforce on account of the injunction) to enable this commission to reach a conclusion.

The question is clearly presented in the record whether or not a road may switch for some persons or shippers and refuse to switch for others;

whether it may accommodate some patrons upon a convenient track and arbitrarily exclude others from the same privilege, making them go for their goods or material to another track less convenient.

We believe that the position of the respondent that they have a right to receive from and deliver to some parties upon this "Y" and refuse the petitioners herein is wholly untenable. The principle of the law is fundamental that railroads being public carriers must treat all persons under similar circumstances alike. They must accommodate all who make application for the same kind of service in the same manner, extending favors to none and excluding none from equal participation in the use of their facilities. Railroads perform a public service and are called upon to exercise it impartially for every member of the public they are called upon to serve.

The principles announced have been so universally held by the courts that we deem the citation of authorities unnecessary. Nothing would be more dangerous in practice than to allow railroads, which are such a powerful instrument in the business interests of the country and upon which the welfare of every citizen more or less depends, to choose for themselves whom they are to serve.

Under such a ruling by this commission as that, or if that were the law, the railroads could soon build up or destroy any community.

We are, therefore, of the opinion that the respondent company, with its "Y" for public use, switches cars at this point for some of its patrons it is under legal obligations to switch impartially for all who apply and to tender its reasonable charge for such service. And that the claim made in the past that this service was performed as a mere accommodation is not tenable, but that it is its legal duty which it has performed in years gone by, and nothing appears in the evidence at this time to justify the contention of the respondent company. And their switching for a portion of their patrons and refusing to switch for others under similar circumstances is a discrimination under the law.

We hope the matter may now be adjusted between the parties without resort to judicial determination of the question, which not being a court in the proper sense we are not authorized to make.

By order of the commission, this date Jan. 12, 1910.

ORVILLE F. BERRY, *Chairman.*

L. I. BREGMAN & COMPANY

V.

CHICAGO & NORTHWESTERN RY. CO.

The petitioner in this case asks that an overcharge of freight be refunded to them from the defendant, the Chicago & Northwestern Railway Company. The facts in the case are that the petitioner loaded a car at Evanston, Ill., with scrap iron and billed the same to Kewanee, Ill. The freight schedules show that the rate from Evanston to Chi-

ago is 40 cents per gross ton and the rate from Chicago to Kewanee is 55 cents per gross ton, making a total freight rate from Evanston to Kewanee of 95 cents. The shipper was entitled to have the car routed by the route giving him the benefit of the cheapest rate. It is contended in this case that there were no orders given as to the routing and the defendant claims they had a right to route it as they saw fit and did so, routing it from Chicago over their own road via Sterling, Ill., to Kewanee and charged a rate of \$1.40 per gross ton. Had the car been routed Chicago via C., B. & Q. R. R. Company to Kewanee the rate would have been as above stated. Without determining the question of fact between the parties as to directions for routing, we hold that it is the duty of the defendant company in this case and the common carrier in all cases when receiving cars of freight for shipment to route them over the route that will give the shipper the advantage of the cheapest freight rate. The defendant in this case did not do that but routed it in such a way as to very materially increase the freight rate, and the difference in the freight as routed and as the car should have been routed, in our opinion, is \$11.40. We hold that although no specific directions were given, that it is the duty of the common carrier in making up a through rate to use the lowest combination of rates for the shipment.

It is therefore the opinion of the commission that the defendant company should refund the petitioner the amount of overcharge freight.

By order of the commission this 23d day of February, 1910.

ORVILLE F. BERRY, *Chairman.*

EDWARD G. DAVIES

V.

THE ILLINOIS CENTRAL RAILROAD COMPANY.

Appearances—For the complainant, Edward G. Davies; for the respondent, John G. Drennan and V. W. Foster; for counsel, Blewett Lee.

The complaint in the case contains ten paragraphs covering several subjects which were presented to the commission upon the hearing. A large amount of testimony was taken and a very wide range was allowed the complainant in presenting his charges to the commission.

Paragraph one of the complaint states that the complainant is engaged in business in the city of Chicago as a general consignee of fruits and vegetables receiving shipments from Cairo, Anna and other points in Southern Illinois, along the line of the defendant's railroad.

Paragraph two states that the defendant company is a common carrier engaged in doing business as a railroad company and is subject to the statutes of the State of Illinois regulating the rates made and promulgated by this commission.

Paragraph three states that the defendant company through its management has established and maintains and enforces various unauthorized rules, rates and regulations which are unlawful and that it has undertaken to set aside the laws of the State, and the rules and regulations of this commission.

Paragraph four charges that the defendant refuses to discharge, for the complainant, certain duties and services in connection with the transportation of the property, which are indispensable to the performance of the common carrier's duty; and that one of these duties is that the defendant refuses to unload shipments in packages at point of destination unless the complainant shall pay or furnish a satisfactory guarantee of said payment of such unauthorized charge. It also charges that defendant company is performing the same duties for other persons without exacting any charge or imposing any such conditions.

Paragraph five is a general charge that the defendant company is unreasonable in its charges, conducts its business to the detriment of the complainant and discriminates against him in the discharge of his business.

Paragraph six charges that the defendant company has, on various shipments and at divers times, charged and collected from the complainant a greater toll of compensation for the transportation of property than it charged or collected from others for the transportation of property of the same and similar kind and from and to the same destination.

Paragraph seven charges the defendant company with collecting and receiving, from the complainant, charges at a larger and heavier weight per barrel for sweet potatoes from Anna and Cobden, Ill., than the weight provided for equal quantity in the classification of this commission, while it charged other persons the weight provided for in the classification.

Paragraph eight charges that the defendant company demanded and collected from the complainant a charge equal to \$4.00 per ton for ice used to protect shipments consigned to the complainant whilst at the same time shippers of meats were charged but \$2.50 per ton for similar ice at the same station.

Paragraph nine charges that the defendant company collected for and received pay for more ice than was furnished to the complainant.

Paragraph ten is a general charge of discrimination and concludes with a general prayer for relief.

The complainant has filed with the commission a brief and abstract of the evidence and an argument. The defendant company has filed a brief and argument and the complainant has filed a reply brief. The evidence in the case is very voluminous, much of it having but little, if any, bearing upon the real questions involved, but was admitted so that the commission might have before it all the facts offered.

The commission has taken great pains to examine very carefully, the testimony, as well as the arguments of counsel, so they might be able to determine fully and fairly the issues involved and reach a proper conclusion.

There is no controversy over paragraphs one and two.

There is no evidence in the record sufficient to justify the charges made in paragraph three.

The charge in paragraph five is so very general that we have been unable to find in the record testimony to apply to such general charges.

In paragraph six it is charged that the defendant company on various shipments and at divers times charged, demanded and collected and received from the complainant a greater toll and compensation for the transportation of property from the complainant than the said defendant charged, demanded and collected from other parties for the transportation of property of the same and similar kind and in packages of the same size and measurement at the same place and from the same destination. This charge, if sustained by the testimony, would be discrimination, but we have searched in vain for specific instances of such charges and while we hold that, if true, the charges made would constitute discrimination, there are no specific cases in which we can determine that matter.

The charge in paragraph seven is that the defendant demanded, collected and received from the complainant, charges at a larger and a heavier weight per barrel for the transportation of sweet potatoes and other products from Anna and Cobden, Ill., than the weight provided for equal quantity in the classification as authorized by law, while charging other receivers upon the basis of the weight provided for in the classification. This, if true, would clearly constitute discrimination, but we do not believe the evidence justifies the charge that the defendant company knowingly and purposely charged the complainant a larger and heavier weight per barrel for the transportation of sweet potatoes or other products over its road. The evidence shows that at times actual weights were taken in the shipments and at other times estimated weights were used which sometimes made a difference but the report shows that the particular instance of over-charge referred to is admitted by the defendant company to have been a mistake and the company offered to correct the same, and taking the testimony all together we do not believe it justifies the contention that the defendant company unlawfully over-estimated the weights or purposely made improper charges referred to in this paragraph.

Paragraph eight charges that the defendant company collected and received from the complainant \$4.00 per ton for ice used to protect shipments that were consigned to the complainant, while at the same time the defendant company charged shippers of meats \$2.50 per ton for similar ice at the same station. Considerable testimony was introduced by both parties in relation to the charge made in this paragraph. The fact of the charge being made is not denied. That being true it will be discrimination unless there is some justification for the difference in price charged at the time and places indicated and shown by the evidence.

The evidence showed conclusively that the charge was not unreasonable. In fact, it was proven that the actual cost was as high as \$4.00 a ton, and it could not be contended that the railroad company would not have the right, if it so desired, to some profit.

Ry. Co. v. Hay & Grain Co., 214 U. S., 297.

The cost of the ice itself was fully explained by Mr. Parker, purchasing agent)Record, Part 2, pp. 82, 83), as follows:

"Prior to the year 1906 the custom was to purchase ice in Madison, Wis., and haul to Mounds, and there store in an ice house which the company owns, containing about 3,000 tons of ice. It was necessary for us to fill that ice house about four times annually, the consumption being in the neighborhood of 12,000 tons at that point. In addition to supplying ice from Mounds we also purchased ice locally at various points on the division and we felt that the ice supply was costing us too much money.

"The ice cost us at Madison 30 cents a ton and we had to haul that ice about 440 miles and cost us in the neighborhood of \$1.35 per ton from Madison. We estimated that the cost of handling into the house was about 5 cents and rehandling from the house into the refrigerator cars about 60 cents a ton. That was the actual cost of the ice, but the difficulty we had in the transportation was the fact that there was an immense shrinkage which varied with the season, but it was estimated, when we figured on this proposition of establishing an ice factory at Mounds, having one established, that the shrinkage, a portion of the time, was as high as 60 per cent, other times 50 per cent, and in the winter not so much. The ice ran all the way in cost from \$4.00 to \$6.00 a ton, and in some cases the loss was so great that the ice was up as high as \$7.00 per ton, some higher than that, but that was a question. In addition to that we were purchasing ice at 25 cents a hundred pounds, and in some places 30 cents. In order to interest parties in the ice proposition, the company not desiring to construct an ice plant, for the reason that our own consumption would not be large enough to justify the construction, we got some parties interested and agreed to make a contract with them, if they would establish an ice plant; that we would lease them ground and we would take ice from them, making a contract taking from them on certain terms for the whole division, and would avoid the necessity of purchasing in small quantities, and paying 25 cents or 30 cents a hundred pounds.

"Contract made Jan. 1, 1906, and ran for ten years. Under that we guaranteed to take a maximum of 15,000 tons a year. We came very near splitting on that proposition, but they showed to me to my satisfaction that they could not very well afford to make this investment and establish the plant unless they had a guarantee. In addition to that they were to do a commercial business in order to get a tonnage for this plant. The contract provides further that we shall pay them \$3.40 for ice placed in the bunkers of the refrigerator cars, which is considerable less than we were ever able to do. Furthermore, on such car ice was loaded in box cars and distributed on that division we would pay them \$3.00, which was less than we were able to buy locally at that time."

To this may be added the cost of switching the cars, breaking up of trains, labor of handling the ice, keeping of accounts for the ice charges, etc. Mr. McPike (Record, Part 2, p. 123) testified that it took one switching crew at \$500.00 per month, including fuel of engine, all of its time to do the switching to the ice plant at Mounds, and that it was necessary to employ a day ice clerk and a night ice clerk at wages of \$60.00 to \$70.00 per month, so that the actual cost is \$4.00 per ton, and therefore the charge cannot be said, it seems to us, to be unreasonable.

The rate of \$2.50 on packing house products is, we believe, justified because of dissimilar and competitive conditions over which the defendant company has no control. There is no discrimination between different shippers; that is, all shippers of fruits and vegetables are charged the same—\$4.00 per ton. This charge is assessed against shipper of the Fruit Grower' Express (Armour Car Lines) on shipments from Florida and southeastern points, the same as such charge is collected on shipments from southern Illinois. Mr. Carter, a clerk in the Chicago local office of the defendant, testified when asked by Mr. Davies, that such shipments were, he understood, charged \$2.50 per ton, but he was mistaken in that, as was shown by the testimony of Messrs. McPike, Cameron and Keepers, and the certified copies of bills and vouchers made a part of the record.

Dissimilar conditions have been recognized as a good and lawful excuse for what otherwise might be discriminatory rates or charges, not only by the Interstate Commerce Commission, but by the Supreme Court of the United States.

The legality as well as the necessity for such conduct on the part of the railroad company we find is fully justified by the Supreme Court of the U. S. in the case of L. & N. R. R. v. Behlmer, 175 U. S., 648. I quote the following on pages 657 and 658:

"The circumstances of the case at bar are closely like those of the case just quoted. Charleston is a competitive point between all railroad routes, routes partly by rail and partly by water, and routes all water. If the defendants had not consented with each other to lower the rate, no hay whatever would come from the hay producing territory tributary to Memphis; and all the southeast Atlantic states would be compelled to rely on other portions of the west, north or northeast for hay.

"The evidence clearly shows that the rate to Charleston was forced down by this competition. But this is an advantage to all the territory tributary to Charleston and all stations share in it. No such competition exists at Summerville, a small inland town. If it, and others like it, were permitted to share in the circumstances and conditions surrounding Charleston and to get the benefit of the competition which Charleston enjoys, and they have not, then, *ex necessitate*, the South Carolina Railway will be called upon to elect between its through business and its local business, and in this election to give up the former. Thus, all stations on the line of road will pay local freight on hay, and the market, to the extent of imports from Memphis, will be destroyed.

The interstate commerce law was intended to promote trade. Such a construction as is now sought would destroy competition, the life of trade."

Again, at page 667, we quote the following:

"That competition is one of the most obvious and effective circumstances that make the conditions under which a long and short haul is performed, substantially dissimilar, and as such must have been in the contemplation of Congress in the passage of the Act to regulate commerce, has been held by many of the circuit courts. It is sufficient to cite a few of the number:

"Ex parte Kochler, 31 Fed. Rep., 315; Missouri Pac. Ry. v. Texas & Pacific Ry., 31 Fed. Rep., 862;

"Interstate Commerce Commission v. Atchison, Topeka, etc., Railroad, 50 Fed. Rep., 295;

"Same v. New Orleans & Texas Pacific R. R., 56 Fed. Rep., 925, 943;

"Behlmer v. Louisville & Nashville R. R., 71 Fed. Rep., 835;

"Interstate Commerce Commission v. L. & N., 73 Fed. Rep., 409."

Section 4 of the Interstate Commerce Act is practically the same as the statute of the State of Illinois on the question of the long and short haul, and will be found at page 661 of the 175 U. S.

On the question of refrigerating charges, Mr. Henry S. Drinker, Jr., of the Philadelphia bar, in his able treatise on the Interstate Commerce Law, Vol. 1, p. 203, says:

"There are three possible methods of computing refrigeration charges. The railroads may charge for the ice actually used at so much per ton; or for the service of refrigeration at so much per car, no matter how much ice is consumed; or may charge a freight rate per hundred pounds to include icing. In a case decided prior to 1906, the commission said there were advantages and disadvantages in each of these methods, and it was not within its province to prescribe the method to be adopted, it being concerned only with the question as to whether the rate charged the shipper was fair."

Applying the law as stated above, and as we believe it is, we hold that the defendant company was not guilty of unlawful discrimination in making such charge for icing.

The charge in paragraph nine is that the defendant demanded, collected and received extortionate and excessive weight for ice used; that the amount of ice charged for was greatly in excess of the amount supplied by the defendant; that the methods used by the defendant in arriving at the amount of ice was grossly fraudulent.

In our opinion the evidence does not sustain this charge, but we find that the manner of arriving at such weights was the customary way of handling such business. It being, as appears from the testimony, somewhat difficult to get absolute or exact weights. But the company in furnishing such ice undertook to furnish the amount of ice required and paid for.

Paragraph ten is a general charge of discrimination. Many of the charges made in it, if sustained by the evidence, would be discrimina-

tion, but the charges are of such a general character that we have been unable to find sufficient testimony in the record to justify the charges made in such paragraph.

This leaves for final disposition paragraph four, which in fact presents the all important question and the main issue in this case yet to be disposed of. This paragraph charges that the defendant company has refused to discharge certain duties which devolve upon it as a common carrier, namely: the unloading of shipments in packages at the point of destination unless the complainant shall pay or furnish specific guarantee of such payment of an unlawful and unauthorized charge for the performance of a service it, as a common carrier, is bound to perform; while the said defendant company has discharged and is discharging the same service for others without exacting any charge or imposing any conditions whatever. This paragraph presents two questions, of one of which we can easily dispose.

If the defendant company refuses to discharge certain duties for the complainant without pay or a guarantee of payment, which it is in duty bound to do, it, of course, will be liable to the complainant, and if it performs the same duties for others without demanding or exacting any charge or imposing any conditions it is then guilty of discrimination as a public carrier. The charge that the defendant company has made an arbitrary and unlawful charge for the performance of certain services to the complainant and has performed the same duties for others under the same circumstances without imposing such conditions is not sustained by the testimony. That the defendant has refused to perform certain duties which the complainant claims it is the duty of the defendant company to perform, namely; the manner of loading and unloading carload lots of fruit and products and of loading and unloading less than carload lots is not so easily disposed of and is a question with some difficulties and one of great importance, both to the carrier and complainant and to the public generally and to this question which we regard as the all important question in this proceeding, the commission has given special attention. A vast amount of evidence was introduced which was more or less conflicting and a great deal of which threw but little, if any, light upon the real question at issue, but it was the desire of the commission to allow the fullest latitude so that all matters, however remote, might be presented to the commission and considered in coming to their final conclusion in relation to the question at issue. The contention of the complainant is stated in his brief in paragraph 1, 2 and 3, as follows:

1. The law of the State of Illinois imposes upon common carriers the duty of loading and unloading package freight in carload lots and such duty cannot be arbitrarily transferred by such carrier to shippers and consignees.

2. The established custom in the city of Chicago, prior to Jan. 1. 1909, was that package freight in carload lots was unloaded by the defendants without expense to the consignee.

3. The imposition of any charge for the transportation of property in excess of the charges authorized by the schedule of reasonable maximum rates for the transportation of passengers and freight through the State of Illinois is unlawful.

The Interstate Commerce Commission in case No. 1467, Wholesale Fruit and Product Association v. Atchison, Topeka & Santa Fé Railroad Company, submitted June 5, 1908, and decided June 27, 1908, in a case in relation to Interstate Commerce covering every phase of this case rendered a very lengthy and able decision upon the question involved. We have examined the authorities submitted in the briefs of counsel, both for the complainant and the defendant company, and we have also examined with care the opinion of the Interstate Commerce Commission and in view of the fact that the conclusion reached by this commission upon the questions involved is the same in substance as was reached by the Interstate Commerce Commission and also that it is the desire of this commission when it can do so to follow the opinions of the Interstate Commerce Commission upon similar questions. We do not believe we can do better than to adopt as our opinion that part of the opinion of the Interstate Commerce Commission bearing directly upon the questions involved. After reviewing the facts in that case which are in so many respects similar to the facts in controversy here, but which it is not necessary to repeat, the Interstate Commerce Commission, in their opinion, among other things, say: "The largest carrier of fruits and vegetables to Chicago is the Illinois Central. The facilities afforded by that company are the best and we may select it as a representative of what has transpired in this respect. The Illinois Central provides a fruit house which is warmed by steam and at which some fifteen cars can be discharged at the same time and also a fruit platform at which some 30 or 40 cars can be unloaded at once. When these shipments to a general consignee began to be made, the Illinois Central objected to unloading and assorting the packages. These shipments had previously been made as a rule in less than carload quantities. They had been taken from the car by the railroad company, placed upon the freight platform or delivered through the fruit house to the several consignees and the carrier was now asked to do the same thing for the benefit of this general consignee. While the service performed was substantially the same as before so far as the unloading of this traffic went; the rate which it obtained was no longer the less than carload rates, but was the lower carload rate. This controversy with one general consignee in particular extended over a considerable period. The consignee insisted that it was the duty of the railroad company to unload its packages. The railroad company declined to recognize this obligation and compelled the consignee to do the unloading himself. A petition was filed with this commission and a suit was begun in court for the recovery of the expense to which this consignee had been put in the unloading of his shipments. Finally a compromise was reached by which the railroad company agreed to unload onto its fruit platform and into its fruit house packages of fruit or vegetables, shipped as above, without expense to the consignee. While the consignee upon his part withdrew his suit and agreed to make no further claim as to the past.

Our impression derived from the testimony in the former case is that this statement was agreed to by the Illinois Central, principally, for the reason, that while that company had declined to unload for the particular consignee named, it had unloaded, without expense, for one or more competitors of that consignee and had, therefore, been guilty of unlawful discrimination. This arrangement was made in 1902 and since then the Illinois Central has unloaded the so-called granger cars and separated the contents into lots for delivery to the various commission merchants. It continued to do this until January 1, 1908, when it announced that it would require these consignees to unload these shipments on to the fruit platform or into the fruit house. In point of fact, the unloading has continued to be done by the Illinois Central, but that company has made a charge for the service. During the months of January and February it rendered to these consignees bills for the expense of the unloading which amounted to, from 70 cents to \$1.00 per car. By tariff effective April 1, 1908, it imposed a charge of 1.5 cents per 100 pounds for unloading and discharging these vegetables. The complainant has not paid the unloading charge made by the Illinois Central previous to the effective date of its tariff, but since April 1st, it has paid this 1.5 cents per 100 pounds.

The testimony strongly indicates and counsel for the Illinois Central expressly admitted upon the argument that, as a practical matter, the unloading of these cars must be done by that company. They are unloaded onto its fruit platform or into its fruit house. They must be promptly unloaded, and in proper order. To handle its business it is necessary for this company to have exclusive control of its fruit platform and its fruit house and the track which serves these unloading places.

The actual expense of taking the packages from the car and placing them upon the platform is on the average not far from \$1.00 per car. The Illinois Central gave evidence tending to show that the total cost of unloading and distributing these granger cars equalled $11\frac{1}{2}$ cents per 100 pounds, but in arriving at this conclusion a charge was made for the service of the checker, for the expense of maintaining the necessary facilities, and, indeed, for the total expense of making delivery of the car. It is clear that the cost of this delivery is greater than the cost of a delivery at the car door upon the team-track, but it does not exceed the cost of team-track delivery by as much as $11\frac{1}{2}$ cents per 100 pounds.

Since the hearing the Illinois Central has reduced its unloading charges to 1 cent per 100 pounds. As a practical matter these granger cars, if the business is to continue to be transacted in that manner, must be handled substantially as they are; that is, the contents of the car must be removed from the car onto some platform where the packages can be received by the various commission merchants. It would be impracticable to receive packages at the car door and haul them away for subsequent distribution, or to assort them in the car.

It will be seen, therefore, that as this business is handled at Chicago it falls into three classes:

1. Less than carload business, in the case of which the packages have always been unloaded and delivered by the carrier.

2. Carload business, where the entire carload is owned by a single consignee. In this case up to Jan. 1, 1908, it had always been the custom of the defendants or of those mainly engaged in this business, with the exception of the Michigan Central, to deliver the packages to the consignee at the car door.

3. The so-called granger cars, where shipment is made to a general consignee, for the purpose of obtaining the carload rate. With respect to these cars the defendants have always objected to removing and assorting the packages, but have consented to do so under stress of competition and for various other reasons. While the movement of granger cars began some time ago it has only attained considerable proportions within the last ten or twelve years.

It sometimes happens that fruits and vegetables are reshipped in carloads from Chicago to other destinations, and previous to Jan. 1, 1908, it was the custom of the defendants to receive these packages at their stations or on fruit platforms and load them into the car. Since then they have required consignors to do the loading.

The complainant insists that, as a matter of law, it is the absolute duty of the defendants to remove these packages from the car. This claim is based upon the wording of the first section of the act to regulate commerce, which provided that the term "transportation" shall include "all services in connection with the delivery, receipt * * * and handling of property transported," and that it shall be the duty of carriers to furnish such transportation upon reasonable request therefor. But the complainant itself does not seriously insist that the receipt of property necessarily includes the putting of that property into the car, nor that its delivery of necessity involves the taking of the property out of the car, for it admits that bulk freight, in general, and fruits and vegetables, when shipped to the Chicago market, in particular, always have been in the past loaded and unloaded by the shipper and that such a requirement upon the part of the carriers is reasonable. The carrier may receive property at the car door or in the car, as well as at its depot, and it may make delivery at the car door or by delivery of the car itself, as well as by taking the property out of the car and passing it through its warehouse or over its platform.

The defendants, upon their part, insist with equal vigor that, as a matter of law, all carload freight must be loaded and unloaded by the shipper, and they call attention to certain cases, among others, *Schumacher v. Chicago & Northwestern Ry. Co.*, 207 Ill., 199; *Gregg v. Illinois Central R. R. Co.*, 147 Ill., 550; *Chicago, Rock Island & Pacific Ry. Co. v. Kempton*, 72 Ill., App., 105.

The question presented by these cases was upon the liability of the carrier for loss or damage to the property after the car had been placed upon the team track for unloading and it was decided in cases of coal, lumber and hay and that inasmuch as it was the duty of the consignee to unload the car, when the car had been placed by the carrier for unloading, its liability as a common carrier ceased and it became a warehouseman. The car was treated like the freight depot of the railway company.

But the complainant admits that it is the duty of the consignee to unload these three commodities, and it hardly follows from the fact that consignees should unload also carloads of package freight. * * *

It will be readily seen that the facts, as stated in the opinion of the Interstate Commerce Commission above quoted, are substantially the same as the facts in the case under consideration. The Interstate Commerce Commission, in further discussing this same question, again say: "In the handling of carload business two general methods seem to be followed. According to one method the freight is transported by the carload, the carload being the unit. In this case the car is turned over to the shipper and loaded by him. The weight of the car is ascertained by weighing the car itself and deducting the tare. At destination the car is placed for unloading at some suitable or agreed place and is taken possession of by the shipper, who pays the freight and removes the contents. This is the method of shipment employed in handling articles like grain, coal, lumber and many others. Plainly, it makes no difference as to the liability of the shipper to unload this kind of freight, whether the article is loose in the car or is contained in packages which can be handled as such. Grain is uniformly handled loose in the East, but upon the Pacific coast it is shipped in sacks. Lumber is in pieces of various dimensions, while shingles and lath are put up in bundles. Hay is generally compressed in bales, although it might be, at the election of the shipper, trodden into the car without compression. Whether the shipper or the carrier should load and unload these commodities depends not upon whether the commodity is put up in packages, but upon the nature of the commodity itself, or, rather, the manner in which it is handled.

"Certain other carload freight is handled upon an entirely different basis, of which these packages of fruits and vegetables furnish an excellent illustration. A carload rate is named, usually by the 100 pounds, sometimes by the package. When the rate is by the hundredweight, each package generally has an estimated weight. A certain number of packages are counted into the car and receipted for by the carrier at the receiving end. At the delivering end these packages are counted out of the car and receipted for by the consignee. The rate is based upon the package; the carrier is responsible for the package. The consignor ought not to protect the property after it has been counted into the car by the carrier; nor should the consignee be required to receipt for the property until it has been counted out by the carrier. While there is every reason for holding that the shipper should load and unload freight as a strictly carload proposition, there seems to be many reasons why, with respect to commodities handled by the package, the carrier should load and unload, even though the rating applied may be the carload; and such, we think, has been the usual practice in the past. Our conclusion, therefore, is that no general and invariable rule can be laid down applying to all business which takes a carload rate, but that each commodity must be considered by itself.

"It may also be said that, to an extent, each locality must be treated by itself. While it is desirable that rules of this kind should be of uniform application, nevertheless there are conditions at one point which

do not prevail at another, which make it reasonable and necessary to apply different regulations, and when this necessity actually arises the difference may properly exist.

"We confine, therefore, our decision in this case entirely to the handling of this fruit and vegetable business at Chicago.

"The defendants insist that carload rates are lower than less-than-carload rates for the reason that carload business is loaded and unloaded by the shipper, and that it would therefore be unjust in the present instance to require the defendants to unload this carload traffic.

"This case shows that where the entire contents of the car are owned by a single consignee it has always been the custom of these defendants in Chicago to bring these packages to the car door and to load into the car such packages when shipped in carloads from Chicago. This case has been argued by the defendants upon the theory that the main controversy was with consignees of granger cars. Such is not the fact. The testimony shows that of all carload shipments to Chicago only about 15 per cent are in consolidated carloads. The great bulk of these shipments are to consignees who own the entire contents of the car. The serious complaint here is that these consignees are now obliged to spend several dollars in the unloading of these carloads for a service formerly performed by the carrier. Hence, with respect to these shipments, it is not true that the rates were made upon the theory that the unloading at Chicago or the reloading at Chicago was to be done by the shipper. It has always been done, until January 1st, last, by the carrier, and the rates were established in view of that condition.

"This service can be more economically done by the carriers as it has been done in the past, than by consignees. On the whole, we are of the opinion that where these carload shipments are to a consignee who is the owner of the entire contents of the car, and where, therefore, delivery is made upon the team tracks of the defendants, they should furnish, in the future, as they have in the past, the necessary help to bring these packages to the car door and there make delivery to the consignee, and that the present rule and regulation of the defendants, which requires consignees to take these packages inside the car, is unjust and unreasonable.

"The question, with respect to these consolidated carloads, the so-called granger cars, is somewhat different. These carloads move under the carload rate, and are entitled to exactly the same treatment which is accorded to other carloads. The carrier would discharge its full duty if it placed such a carload upon its team tracks and brought the packages to the car door for delivery. It is under no obligation to furnish any place for the assorting of these packages and making delivery to the different individuals to whom the carload is addressed. But, in point of fact, the business can not be carried on unless the packages are assorted and delivered to their respective owners at the tracks of the defendants. The Illinois Central, for this purpose, has provided a fruit platform, which seems to be almost exclusively devoted to this kind of business. It is more work to take these packages from the car and assort them upon this platform than it is simply to deliver them at the

car door. All this is an additional service, entailing upon the defendants an additional expense, for which, in our opinion, a charge may properly be made, in addition to the published rate for transportation. In our opinion 1 per cent per 100 pounds would be a reasonable charge for this additional service, and anything in excess of this would be unreasonable. It must be clearly understood that the consignees of these consolidated carloads are entitled to exactly the same treatment accorded to the consignees of other carload shipments if they so desire; that is to say, such a consignee may, if he elects, demand delivery upon the team track and receive the packages at the car door.

"We are also inclined to think that the Illinois Central may, if it elects, impose a charge for handling these fruits and vegetables through its fruit house when the shipper requires that service. This house is provided to avoid liability of freezing in the delivery of these vegetables. While it may be the duty of the Illinois Central to protect these shipments against damage from cold, it is not required to do this without extra charge."

It is contended by the defendant company that this commission has no power to deal with some of the questions involved in this proceeding. It is the opinion of the commission that it has the power to deal with all of the material questions involved in this proceeding, and after a careful review of the testimony and the decisions, we concur substantially in the conclusions reached in the Interstate Commerce case decision from which we have quoted so liberally and thereby adopt their reasoning conclusion as our conclusion.

It is therefore ordered that the defendant company be and is hereby notified and required to cease and desist, on and after this day from enforcing in the city of Chicago, Ill., consignees of intrastate carloads, shipments of fruits and vegetables in packages to remove the packages from the car, and consignors of carloads of fruit and vegetables in packages in the State of Illinois to load the packages into the car.

It is further ordered that the defendant company be required to put into force and effect from this day, to maintain in force until further order of this commission, the same rule in regard to intrastate carload shipments of fruits and vegetables in packages, to and from the city of Chicago, as is applied to interstate shipments, and enforce a rule and regulation by which said carrier will deliver to consignees, free of charge, the packages at the car door upon their respective team tracks and receive from the consignors such packages either at the car door or at their depot or station platforms.

It is further ordered that the defendant company may charge in the city of Chicago, not exceeding 1 cent per 100 pounds, for removing from the car to their station platform or depots, and distributing in lots to the various owners, consolidated intrastate carloads of fruit and vegetables in packages where said defendant company actually unloads and assort such packages on their respective fruit platforms or depots at the request or with the consent of the consignee.

It is further ordered that the said defendant company may, if it elects, make a reasonable charge for handling these fruits and vegetables through its fruit house when the shipper requires or accepts that service.

Dated at Springfield, Ill., this 17th day of May, A. D. 1910.

ORVILLE F. BERRY, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

IN THE MATTER OF THE INVESTIGATION OF RATES AND CHARGES BY
THE EXPRESS COMPANIES WITHIN THE STATE OF ILLINOIS.

Appearances—Messrs. Cassoday & Butler, representing Chicago Association of Commerce; Mr. W. D. Haynie, representing Illinois Manufacturers' Association; Mr. L. B. Boswell, representing Quincy Freight Bureau; Mr. O. F. Becker, representing Peoria Shippers' Association; Mr. C. S. Jones, representing Illinois Wholesale Grocers, outside Chicago; Mr. C. B. Gregory, representing Rockford Manufacturers' Association; Mr. C. F. Terhune, representing Elgin Commercial Clubs; Mr. W. J. Evans, representing National Association Agricultural Implement and Vehicle Manufacturers; Mr. Geo. E. Green, representing Retail Merchants' Association of Illinois; Mr. J. S. Joplin, representing Bloomington Business Men's Association; Mr. G. N. Blackburn, representing G. F. Harvey & Co., of Peoria; Mr. C. S. Wise, representing Western Stoneware Co.; Mr. T. B. Harrison, representing the American and Adams Express Companies; Mr. M. T. Jones, representing the United States Express Co.; Mr. J. H. Bradley, representing the American Express Co.; Mr. J. D. Ludlow, representing the Wells-Fargo Express Co.; Mr. J. Zimmerman, representing the Adams Express Co.; Mr. M. C. Thaxon, representing the Pacific Express Co.; Messrs. O'Brien, Boardman, Platt & Littleton and Messrs. Winston, Payne, Strawn & Shaw, representing the United States Express Co.

From the answers to the interrogatories propounded by the commission to the several express companies, the following important facts appear as to each company, which we submitted for information, believing that the statements are valuable in view of the holdings and findings of the commission:

PACIFIC EXPRESS COMPANY.

Incorporated Oct. 1, 1879, under the laws of Nebraska.

Authorized capital, \$6,000,000.00.

Paid-up capital, \$6,000,000.00.

One thousand five hundred ninety-three stockholders.

Property owned in Illinois, \$37,275.12.

Operates on five railroads, covering 889 miles.

Gross earnings for the entire company:

1900	\$4,205,075.66
1909	7,750,852.57

Gross expenses for the entire company:

1900	\$3,598,925.68
1909	7,364,161.20

AMERICAN EXPRESS COMPANY.

Unincorporated.

Organized Mar. 18, 1850.

Re-organized Nov. 15, 1859.

Paid-up capital, \$18,000,000.00.

Three thousand seven hundred eighty-seven shareholders.

Personal property owned in Illinois, \$284,684.55.

Real estate owned in Illinois, \$1,350,200.00.

Operates on nineteen railroads, covering 5,219 miles.

Gross earnings for the entire company:

1900	\$16,461,341.00
1908	30,401,566.00

Gross expenses for the entire company:

1900	\$14,654,684.00
1908	29,094,879.00

WELLS-FARGO & COMPANY.

Incorporated in 1866 by a special act of the territory of Colorado.

Authorized capital, unlimited.

Paid-up capital, \$8,000,000.00.

One thousand seven hundred twenty-eight stockholders.

Total value of property in Illinois, \$806,440.99.

Operated on eleven railroads, covering 1,917 miles.

Gross earnings for the entire company:

1900	\$ 9,638,665.58
1909	24,476,232.37

Gross expenses for the entire company:

1900	\$ 8,337,621.51
1909	21,213,953.49

ADAMS EXPRESS COMPANY.

Joint Stock Company, organized in 1854.

Composed of about 3,000 members or partners, who own 120,000 equal shares.

Operates on eight railroads, covering 2,599 miles.

Gross earnings for the entire company:

1909	\$28,853,546.75
Intrastate, Ill.	566,488.61

Gross expenses for the entire company:

1909	\$27,411,308.11
Intrastate, Ill.	526,605.61

UNITED STATES EXPRESS COMPANY.

Joint Stock Association.

Organized in 1854 under the laws of the state of New York.

One hundred shares; par value \$100.00 each.

One thousand five hundred ninety-three shareholders.

Total personal property owned in Illinois, \$87,352.52.

Real estate owned in Illinois, \$782,581.22.

Operates on nineteen railroads, covering 1,798 miles.

Gross earnings for the entire company:

1900	\$10,320,661.39
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1908	16,626,379.51
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Gross expenses for the entire company:

1900	\$ 9,705,845.00
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1908	16,278,253.04
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OPINION BY ORVILLE F. BERRY, *Chairman.*

From a preliminary examination by the commission into express rates in the State of Illinois and the importance of that character of transportation, it determined and did institute an investigation for the purpose of inquiring into the rates, charges and general practices of transportation by the express companies of the State of Illinois.

While no formal complaint was filed before the commission prior to the beginning of the investigation, a large number of shippers and commercial organizations had called the attention of the commission to what they believed to be irregularities, discriminations and overcharges by the express companies in this State.

It has been and is now contended by the express companies that the commission has no jurisdiction or power to regulate express rates in the State of Illinois. The commission, however, after a careful examination, reached the conclusion that under the laws of this State, the commission has jurisdiction to regulate express rates and assuming that power and jurisdiction, in November last, began an investigation. All the express companies doing business in this State were duly notified to be present.

The five leading companies doing business in the State of Illinois and among the largest companies in the United States, namely, the Pacific Express Co., the American Express Co., Wells-Fargo & Company Express, the Adams Express Co., and the United States Express Co., after having been notified by the commission of the investigation and hearing and after having been presented with certain interrogatories prepared by the commission, answered the same and appeared before the commission and took part in such investigation, including oral arguments as well as printed briefs, in relation to all phases of the express business inquired into at such investigation.

The express business began about seventy years ago, and its gradual development to the present time is not only an interesting subject for study, but demonstrates the rapid growth of transportation in the United States.

There are eighty express companies other than the five companies above named doing business in the United States. The very nature of the business enables them to do a very extensive business upon a limited capital, when compared with the immense amount of capital necessary and in use by the railroads and other large transportation and industrial institutions of the country.

All of the five leading companies named and many others started with but little or no capital and by capitalizing their business on prospective or real earnings, now have large assets and many of them are in possession of a large amount of real estate, stocks, bonds, mortgages and other personal property which are not necessary in their business as common carriers.

As compared with other business of similar importance and character but little information has been given out or procured by the public as to the management, methods of doing business and the earnings and profits of these companies.

They have not only grown to be large transportation companies, but a number of them are, today, huge institutions, doing a semi-banking business on the currency and through the use of the machinery of the banks to which they pay no revenue; they are not under the jurisdiction of any banking department and pay no taxes as such. It is not generally understood just how rapid has been the extension of the financial business of the express companies within the last few years.

Since 1890 and not including 1907, the value of money orders issued has increased from \$4,958,567, annually, to \$14,014,960.00 or a gain of over 200 per cent.

The orders issued by these express companies in 1907 had a value of \$147,346,656.00, and in addition to that they issued letters of credit to the amount of \$20,828,932.00. Thus it appears that the financial paper issued by the express companies in one year was \$168,175,588.00. This represented the actual deposit of so much money, by which the public, with the express companies and applying the usual banking estimate to it, a very large amount of it was in the treasury of the express companies during all of that period.

We call attention to the fact of the small amount of capital required by express companies to do business and the character of this semi-banking business, as we believe it an important factor in determining what the charges of such companies should be.

The express companies could retire from business, lose all of the property absolutely necessary and used for the carrying on of their business as common carriers and it would affect the value of their assets but very little, while if the railroads and other large industrial institutions undertook to do the same thing, they would practically eliminate their entire assets.

An express company, in our opinion, under the laws of this State, like a railroad company, is a common carrier, it is engaged in transportation for the public, for a consideration. In almost every particular the same rules of transportation, save in quantity and price, govern the express company that govern the railroad.

They are not only common carriers, but in the very nature of their business they are a monopoly and constitute a much more complete monopoly of business than do railroads in respect to the traffic which they handle.

The Supreme Court of the United States has held that a railroad may give an express company exclusive right to do business upon its line. And the five express companies, above referred to, under such exclusive contracts, operate upon 167,000 miles of railroad, or 73 per cent of the entire railroad mileage of the United States. Their rates between competitive points are fixed by tacit, if not express agreement, and they issue tariff rates and schedules of prices, substantially in the same form, but not so extensively, as the railroads or other common carriers.

Every consideration requiring supervision of the railroads by the State commissioners or Interstate Commission applies with equal, if not greater, force to express companies.

Express service is composed of three elements:

First—Terminal service, consisting of wagon service in gathering and delivering packages, marking, placing on or receiving from the railroads.

Second—The care and handling while in transit on railroad.

Third—The transportation, which is almost entirely performed by the railroads.

The important relation which terminal service bears to the entire service of the express business was clearly and well stated, recently, with the approval of the president of the Adams Express Company, as follows:

"The chief service which the express company performs is the terminal service—a service entirely away from the railroads and stations; the collections, care and delivery of packages constitutes the science of the express business."

It is evident that the cost of transportation of any article, by any means, must increase in proportion to the distance; but it is equally true that the charges made or the distance carried does not increase the terminal service, and while we should allow increase charges for distance, the terminal charge should remain the same without regard to distance, and the express company, in fixing rates, should not be permitted to increase their terminal expense in proportion to the distance the article is carried or the charge made for such actual distance. It has been the custom of express companies to do this.

The terminal charge for a package, weighing 100 pounds from New York City to Quincy, Ill., would be about \$3.75, while the charge on the same package from New York City to San Francisco, Cal., would be about \$15.00, yet the terminal charge on each would be practically the same.

The usual contract made by an express company with a railroad company provides that the railroad company shall furnish the necessary cars and haul them over its lines, together with the employes of the express company necessary to care for the traffic en route. At stations the railroad company permits the use of station facilities by the express company.

The express company on its part assumes all the risk for damages to express matter and all liability for injury to its employes, and agrees to

pay the railroad company a fixed per cent on its gross earnings, with a guaranteed minimum amount. It was formerly the custom to make the contracts upon a tonnage basis, but the gross earnings plan is now in general use.

The evidence in the record shows that these contracts provide that the express companies shall pay to the railroad for such service from 45 per cent to 55 per cent of the gross earnings, the average being about 50 per cent.

There is a large community of interest between the express companies and the railroads, as it appears from the record that railroad companies own approximately \$25,000,000.00 of stock or interests in express companies.

The various railroads have succeeded in selling to the Adams Express Company nearly \$15,000,000.00 of their securities, to the American a like amount, to the United States over \$3,500,000.00, and to the Wells-Fargo over \$1,000,000.00.

The entire capital stock of the Pacific Express Company was issued, when the company was organized in 1879, to the three railroads that still own it, as follows: Missouri Pacific, \$2,400,000.00; Union Pacific, \$2,400,000.00; and the Wabash, \$1,200,000.00. Not a dollar in cash was paid for this stock. In fact and in law, it was issued without consideration. Ostensibly the stock was issued by the express company in exchange for the right to do business over the lines of the railroad companies, but the actual consideration for such right is the payment of 50 per cent of the express company's gross earnings to such railroads. The \$50,000,000.00 of stock in reality was given gratuitously to the railroads.

No presumption can possibly arise in favor of the reasonableness of express charges based upon a capitalization thus created or based upon the railroads' compensation for transportation under such circumstances.

The United States Express Company has a capital stock of \$10,000,000.00. Yet the vice president of the company, in a hearing before the Indiana Commission, stated that so far as he knows or the reports show, no money was ever paid into the treasury for this stock.

The Wells-Fargo & Co. Express issued an official statement July 3, 1906, by order of the board of directors over the signatures of President Dudley Evans and Vice President and Secretary H. B. Parsons, requesting proxies for use at the annual meeting on August 9th, and said in substance:

"In view of the effort being made by certain parties to secure control of the company, under the promise of extravagant cash dividends or watering the stock by creating stock scrip on a dividend basis, it is proper that the directors should state that their policy has been, first of all, to conserve the investment represented by your stock through the establishment of the company upon a sound and stable basis, rather than the speculative policy of larger and fluctuating dividends. The result is shown in the strong position which the company has recently attained; and the present management has the right to remind you that in 1901 the surplus was \$3,300,000.00, while today it is \$12,400,000.00."

From whence comes this large increase in surplus if the business of the company is not profitable? An increase of \$9,100,000.00 in five years looks prosperous.

As a further proof of the community interest between the express companies and the railroads, the record shows that on June 30, 1906, the Adams Express Company owned the following amount of stock in the following railroads:

Atchison, Topeka & Santa Fé Ry. Co.....	\$ 400,000 00
Baltimore & Ohio R. R. Co.....	290,300 00
Chicago, Milwaukee & St. Paul Ry. Co.....	425,000 00
Chicago & Northwestern Railroad Co.....	317,400 00
Chicago, Peoria & St. Louis Ry. Co. of Illinois.....	247,750 00
Iowa Central Ry. Co.....	191,000 00
Litchfield & Madison Ry. Co.....	50,000 00
Pennsylvania R. R. Co.....	6,171,400 00

Total.....	\$13,865,650 00
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As a proof of the community of interest existing among express companies the record shows that the Adams owns \$100,000.00 par value in the American, \$650,000.00 in the Southern, and \$906,000.00 in the United States; that the American owns the National entirely, and \$1,000,000.00 in the United States; that the Southern owns \$111,800.00 in the Adams, \$118,500.00 in the American and \$70,000.00 in the United States; and that the United States owns \$51,200.00 in the Wells-Fargo. (Exhibit A, Abst., 273.) E. H. Harriman, who dominated the Union Pacific Railway Company, owner of 40 per cent of the Pacific Express stock, was at the time of his death chairman of the board of directors of Wells-Fargo & Co. Express, probably the most influential of all the express companies.

There can be no question in view of the interests of the express companies and the railroad companies, and even the interest of one express company in another, that it would be impossible, in many cases, to tell where one begins and the other ends. This is important in view of the fact that competition is the life of trade, and one of the elements in all business to bring about just rates and fair prices.

With such community of interests as shown above, it is needless to say that competition is out of the question and the public is left to other means to secure proper rates.

Without going into a lengthy statement or detail, the record conclusively shows that there is no uniform schedule of rates even by the same express company over different roads and that unjust discriminations are practiced by the companies in many respects and in many places and this in a large measure grows out of what is known as the graduate scale.

At the hearing the Wells-Fargo Co. introduced Exhibit "K," showing the rates compiled by that company on three different lines of railroad over which it operates in the State of Illinois. The exhibit shows that for distances of from forty-five to sixty miles, the Wells-Fargo rate over the A., T. & S. F. R. R. is 75 cents; over two other roads it is 60 cents. The same exhibit also shows that for distances of from eighty to 100

miles the rate is 75 cents over the C., M. & St. P. R. R. and over the A., T. & S. F. R. R. it is 85 cents, and over the Chicago & Great Western it is \$1.00.

This practice is pursued more or less by all of the companies, as shown by their several schedules filed in the record, and the evidence makes it clear that this commission cannot correct the evils existing and practiced in connection with the present methods without fixing a uniform mileage distance scale.

It is contended that the new rates now established by the express companies are not sufficiently high, in view of present conditions, to justify the commission in making any reductions. It is insisted that the companies, upon their capital invested, are not receiving any more than a just compensation for the service rendered the public. With this contention the commission does not agree.

The express companies all have larger surpluses and large stock and bond issues far beyond what is necessary for the carrying on of their business as a common carrier and the public should not be required to pay larger returns on large investments or assets not necessarily used or to be used in business for the public and dividends upon stock for which nothing was ever paid.

In computing the rate of income, the amount of capital actually necessary for the discharge of the business of the express company is the only amount that should be considered.

It is also contended by the express companies that in view of the large per cent of their gross income they are required to give the railroads for the transportation, that they are thereby compelled to keep their rates where they are, and in many instances should be permitted to raise them. Without, at this time, entering into the question of the propriety of contracts such as are made by express companies with the railroads or their effect upon transportation, it is sufficient to say that an express company or common carrier should not be permitted as against the public to insist that a contract, of its own, that it had voluntarily entered into, was a reason for increasing the burden of the shipper. These contracts are voluntary undertakings between these respective parties to which the public is not a party and afford no excuse for rates which would, but for such contracts, be lower. Express companies, because of their peculiar relation and complicated connections with railroad companies, may submit to and execute contracts which they say are unreasonable. The public should not carry the burden for them by paying advanced rates for which there is no shadow of reason.

The evidence in this case showing the great community of interests between the express companies and the railroads, and the fact that the railroads already receive 50 or more per cent for transportation from the express companies, we are led to inquire whether it would not be better for all concerned if railroads should so change their manner of doing business as to carry all express matter. Indeed we may say that the more we investigate the conditions which surround the express business, the more we are inclined to believe that the time is not far distant when the necessity for the existence of express companies as common carriers will be at an end. Fast freight trains for the heavy articles and

very little additional equipment of the railroads for small packages will enable them to perform express service, and unless express rates and express business is not put upon a more equitable basis, the public will, in all probability, demand some such change as is herein suggested. In many other countries the leading railroads include in their service the collection, carriage and delivery of packages and parcels similar to the service rendered by our express companies, and are doing it successfully, and the charges are both gratifying to the shippers and the delivery is both satisfactory and prompt.

While it is not always safe to assume that what can be accomplished, is practical under the conditions in our own country yet, surely it is worth while to make an inquiry into the methods adopted by other countries for meeting the public convenience with satisfactory results.

The commission feels very keenly the importance of this investigation and realizes the responsibility it is assuming in promulgating a schedule of rates for express companies in the State of Illinois. It realizes the necessity of safe and prompt transportation; it believes that the various transportation lines are the real blood and sinews of power of our great commonwealth; it believes that every common carrier should be dealt with fairly and should receive a fair compensation for services rendered and a fair return for all capital necessarily invested in its business. But it also believes that the manufacturer and shipper who are of equal importance to the business interests of the country, should not be required to pay more for transportation than will properly remunerate the common carrier; that the shipper should not be called upon to pay such prices for his transportation in order to enable any company or corporation to pay large returns upon a large amount of capital not directly invested in the business in which it is engaged. It also believes that while the common carrier is an important factor in the commerce of the country and should be properly compensated, that such common carrier, of whatever kind or character, should be equally fair and frank with the public and should not undertake by watered stock or improper capitalization of its business, require its patrons to pay unjust prices for the services rendered in order to permit it to pay large returns upon a fictitious capital.

While the express companies have an important field in the business world, they have not as it appears from all the investigations, and especially this one, dealt as fairly and as openly with the public in previous years as they should have done.

It is only fair to say that we believe there is a growing spirit of fairness and open dealing abroad in the land, today, that has not characterized the business in former years and it is the desire of this commission to bring about such a coöperation of every great interest in this State as will entitle each interest to its proportion of the business and all interests a proper remuneration for the service and capital invested and that the business may be conducted between all of these great interests with a proper feeling of each for every fellow man engaged in similar or other business.

From our investigation and the record in this case, we believe the following conclusions will be fairly drawn:

First—That the returns from the capital actually and necessarily employed in the operation of express service by express companies in the State of Illinois is excessive.

Second—That the rates and charges now made by express companies which yield these excessive returns upon the capital actually and necessarily employed in the express business, should be reduced to a basis which should bring a fair remuneration on a fair value of the actual property employed in the business.

Third—That the present basis of rates, besides being excessive, is in many instances discriminatory, as it imposes varying charges for identical services.

Fourth—That transportation charges should be based upon distance and graduated in proportion to weight.

Fifth—That terminal charges should be based upon wagon service belonging uniformly to all shipments, irrespective of the distance between the points of shipment and delivery.

Sixth—That the charges for care and other details should be based upon the actual value and cost of such service.

Realizing that it is impossible to make a schedule of rates that will be entirely satisfactory to all interests and further realizing that it is impossible to perfect as large and intricate business as the express business, at one time, and believing that it can be perfected only by the continuous effort of all parties concerned and for the purpose of taking the first step in that direction, the commission has prepared a schedule of maximum rates and charges for all the express companies doing business and operating in the State of Illinois, which schedule shall be known as the Illinois Railroad and Warehouse Commission's express tariff No. 1.

This schedule is based upon the facts set forth in the record in this case, and the conclusions reached by the commission.

This cause coming on for final hearing and disposition, the commission having jurisdiction of the subject matter, as well as the parties in interest; namely, the express companies doing business and operating in the State of Illinois, and having heard the testimony, arguments of counsel, and being fully advised in the premises, it is hereby ordered, adjudged and decreed that the maximum schedule of rates and charges for all the express companies doing business and operating within the State of Illinois, known as the Illinois Railroad and Warehouse Commission's express tariff, No. 1, which is marked Exhibit "A," and made a part of this order, be and the same is hereby approved and made the schedule of maximum rates and charges for the government and control of all the express companies doing business or operating within the State of Illinois.

It is further ordered that the rates named in the said schedule are found by the commission to be reasonable maximum rates for the transportation of merchandise by each of said express companies doing business in the State of Illinois, on intrastate shipments, between stations, in the State of Illinois.

It is therefore further ordered that the said schedule of rates known as Exhibit "A" and hereto attached as hereby established, are reasonable maximum rates for the transportation of merchandise for all the express companies doing business and operating between all the stations of the respective lines of railroad operated over by them in the State of Illinois.

It is further ordered that every express company doing business and operating in the State of Illinois is hereby required to put said rates into effect in the State of Illinois on the 15th day of October, A. D. 1910.

It is further ordered by the commission that each of the express companies doing business in the State of Illinois is hereby required to keep at each station or office where it does business in this State, in some conspicuous place, in charge of its agent, all their tariffs and rates of charges, together with the classification affecting rates between stations in the State of Illinois for the inspection and use of the public, during business hours. Each company shall post in the office where the business is done and in a conspicuous place a notice stating where such schedule may be inspected.

It is further ordered, adjudged and decreed by the commission, that the several express companies shall make use of the schedule marked Exhibit "A" and attached to this order and known as the Illinois Railroad and Warehouse Commission's express tariff, No. 1, prepared by the Illinois Railroad and Warehouse Commissioners, showing the maximum charge for the transportation of merchandise on intrastate shipments, between points in Illinois, forwarded by one express company over one line of railroad or a system of railroads under one ownership, management or control.

It is further ordered by the commission that the said express companies shall not make any advance in their present published schedule of charges for the handling of intrastate shipments between points in the State of Illinois served by one express company unless authorized to do so after hearing by this commission.

The commission hereby reserves the jurisdiction over the parties, the rates, rules and practices not specifically set forth in this order for the purpose of entering any further order or orders from time to time as may seem necessary and proper.

By order of the commission, dated at Springfield, Ill., this 25th day of August, A. D. 1910.

ORVILLE F. BERRY, *Chairman*;
B. A. ECKHART, *Commissioner*;
J. A. WILLOUGHBY, *Commissioner*.

SAME CAUSE.

This cause coming on for final hearing and disposition, the commission having jurisdiction of the subject matter, as well as the parties in interest, namely, the express companies doing business and operating in the State of Illinois, and having heard the testimony and arguments

of counsel, and being fully advised in the premises, it is hereby ordered, adjudged and decreed that the maximum schedule of rates and charges for all of the express companies doing business and operating within the State of Illinois known as the Illinois Railroad and Warehouse Commission's express tariff, No. 1, which is marked exhibit "A" and made a part of this order, be and the same is hereby approved and made the schedule of maximum rates and charges for the government and control of all of the express companies doing business or operating within the State of Illinois.

It is further ordered that the rates named in the said schedule are found by the commission to be reasonable maximum rates for the transportation of merchandise on each of said express companies doing business in the State of Illinois on intrastate shipments between stations in the State of Illinois.

It is, therefore, further ordered that the said schedule of rates known as exhibit "A" and hereto attached as hereby established, are reasonable maximum rates for the transportation of merchandise for all of the express companies doing business and operating between all the stations of the respective lines of railroad operated over by them in the State of Illinois.

It is further ordered that every express company doing business and operating in the State of Illinois is hereby required to put said rates into effect in the State of Illinois on the 15th day of October, 1910

It is further ordered by the commission that each of the express companies doing business in the State of Illinois is hereby required to keep at each station or office where it does business in this State, in some conspicuous place, in charge of their agent, all their tariffs and rates of charges, together with the classification affecting rates between stations in the State of Illinois, for the inspection and use of the public, during business hours. Each company shall post in the office where business is done and in a conspicuous place a notice stating where such schedule may be inspected

It is further ordered, adjudged and decreed by the commission that the several express companies shall make use of the schedule marked Exhibit "A" and attached to this order and known as the Illinois Railroad and Warehouse Commission's express tariff, No 1, prepared by the Illinois Railroad and Warehouse Commissioners, showing the maximum charge for the transportation of merchandise on intrastate shipments between points in Illinois, forwarded by one express company over one line of railroad or a system of railroads under one ownership, management or control.

It is further ordered by the commission that the said express companies shall not make any advance in their present published schedule of charges for the handling of intrastate shipments between points in the State of Illinois, served by one express company, unless authorized to do so after hearing by this commission.

The commission hereby reserves the jurisdiction over the parties, the rates, rules and practices not specifically set forth in this order for the purpose of entering any further order or orders from time to time as may seem necessary and proper.

By order of the commission, dated at Springfield, Ill., this 25th day of August, A. D. 1910.

ORVILLE F. BERRY, *Chairman*;
B. A. ECKHART, *Commissioner*;
J. A. WILLOUGHBY, *Commissioner*.

WEDRON WHITE SAND CO.

V.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.

The evidence in this case shows that the complainant is a shipper of sand from Millington, Wedron and Ottawa to Streator, Ill., and that the freight rate on sand in carloads for a number of years was forty (40) cents per ton from each of said stations;

That later the rate from Ottawa was changed to thirty (30) cents and the other two left at forty (40); then another schedule was made, making all these rates thirty (30) cents.

It is contended by the defendant that when all the rates were made thirty (30) cents per ton, it was an error in the tariff sheet and as soon as discovered, the rate from Ottawa to Streator was fixed at thirty (30) cents and from Wedron and Millington to Streator at forty (40) cents.

It is insisted by the complainant that this is a discrimination and said discrimination puts them at a disadvantage in shipping sand to Streator.

It is contended by the defendant railroad that all tariffs should be made by mileage and from Ottawa to Streator is sixteen (16) miles; from Wedron to Streator is twenty-four (24) miles, and from Millington to Streator is thirty-eight (38) miles, and that they are justified in leaving the rate as it now is.

All schedules of freight rates made by this commission are made on a mileage basis and the commission has uniformly held that they are not authorized under the law to make the same rate of tariff for different mileages.

In view of that unanimous holding of the commission and the law as we understand it the commission would have no power or authority to fix the same rate for different mileages.

Hence the commission will be compelled to deny the relief prayed for by the complainant.

The railroads frequently make the same rate from points where there is as much difference as there is between the points in controversy, but that is a financial matter upon their part and the commission would not interfere with their doing that way, but in many instances would be glad to have them do so, as they would in this case.

In view of the above facts the prayer of the petition will have to be denied.

By order of the commission, dated at Springfield, Ill., this 20th day of October, A. D. 1910.

ORVILLE F. BERRY, *Chairman.*

ILLINOIS MANUFACTURERS' ASSOCIATION

v.

BALTIMORE & OHIO SOUTHWESTERN RAILROAD

CHICAGO & ALTON RAILROAD

CHICAGO & EASTERN ILLINOIS RAILROAD

CHICAGO, BURLINGTON & QUINCY RAILROAD

CHICAGO, PEORIA & ST. LOUIS RAILWAY

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY

ILLINOIS CENTRAL RAILROAD

LOUISVILLE & NASHVILLE RAILROAD

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY

SOUTHERN RAILWAY

TOLEDO, PEORIA & WESTERN RAILWAY

WABASH RAILROAD.

This is a proceeding begun by the filing on May 5, 1910, of a petition asking the commission to prevent the increased freight rates on coal from going into effect as fixed by tariff rate of the defendant railroads.

The petition alleges that the defendants are common carriers engaged in the transportation of freight in the State of Illinois.

Petition alleges that the defendants have served notice upon the consumers of coal that an advance in the transportation rates of soft coal in the State of Illinois will be effective on or before June 1, 1910, to Chicago, Peoria and Central and Northern Illinois, as follows:

Carterville	From .98 to 1.10	Advance 12c
Harrisburg	" .95 " 1.07	" 12c
Princeton	" .97 " 1.07	" 10c
Springfield	" .75 " .85	" 10c
Belleville	" .90 " 1.00	" 10c
DuQuoin	" .90 " 1.00	" 10c
Clinton	" .70 " .80	" 10c
Danville	" .67 " .77	" 10c
Fulton County	" .65 " .75	" 10c

Petition alleges that the following railroads are engaged in the transportation of coal through the points specified as follows:

Carterville—St. Louis, Iron Mountain & Southern Railway and the Illinois Central Railroad.

Harrisburg—Cleveland, Cincinnati, Chicago & St. Louis Railway.

Princeton—The Chicago, Burlington & Quincy Railroad.

Springfield—The Illinois Central Railroad, the Chicago & Alton Railroad, the Baltimore & Ohio Southwestern Railroad, the Chicago, Peoria & St. Louis Railway and the Wabash Railroad.

Belleville—The Illinois Central Railroad, the Louisville & Nashville Railroad and the Southern Railway.

DuQuoin and Clinton—The Illinois Central Railroad.

Danville—Chicago & Eastern Illinois Railroad, and the Cleveland, Cincinnati, Chicago & St. Louis Railway.

Fulton County—Toledo, Peoria & Western Railway and the Chicago, Burlington & Quincy Railroad.

Petition states that there is no justification for such proposed increase and alleges that the present rate is remunerative and sufficient.

Petition states that the four great coal carrying roads in the State of Illinois are the Illinois Central Railroad, the Chicago & Eastern Illinois Railroad, the Chicago & Alton Railroad, and the Cleveland, Cincinnati, Chicago and St. Louis Railway, commonly known as the Big Four.

Petition states that in 1903 the Illinois Central Railroad carried 6,000,466 tons of soft coal in the State of Illinois, and in 1908 said road carried over 7,000,000 tons of soft coal; that the Chicago & Eastern Illinois Railroad carried 4,000,000 tons of soft coal in 1903 and approximately 6,000,000 tons of soft coal in 1908; that the Chicago & Alton Railroad carried in 1903 about 2,600,000 tons of soft coal and in 1908 approximately 4,000,000 tons of soft coal and in 1908 approximately 4,000,000 tons of soft coal; that the Big Four carried approximately 600,000 tons of soft coal in 1903 and 1,800,000 tons of soft coal in 1908.

Petition states that the present freight rates for the transportation of soft coal are unreasonably high and exorbitant; therefore, prays the commission to reduce the maximum schedule of rates for the transportation of soft coal to 10 per cent below the present rates now in effect.

The defendant roads each appeared by counsel and also filed their answers to the said petition.

The defendants in their respective answers admit that they have issued tariffs providing for an advance in the transportation rates on soft coal in the State of Illinois, and elsewhere, effective June 1, 1910, and that the proposed advance will increase the rates approximately 10 cents per ton.

They deny that the said proposed advance to the intermediate points approximate an increase of 10 to 20 per cent over existing rates, but admit that the tariff issued to become effective. increases the rate per ton approximately 10 cents.

The defendants state that the rate proposed to be put into effect is lawful under the laws of the State of Illinois and within the schedule of maximum rates heretofore fixed.

The defendants admit that the rates charged at present have been in effect for many years, but each and all of them deny that the rates now in effect are remunerative or sufficient, but aver that to enforce their continuance the defendants will be required to carry coal at a loss.

The defendants each deny the truth alleged in the petition that the greater the tonnage of any commodity carried the less is the cost of transportation, but aver that the greater the tonnage the more the cost, and that is especially true, it is charged by the answers, for the transportation of coal, which requires a return empty of practically all cars used in such transportation.

The defendants deny that they are paying larger dividends than ever or that there has been such increase in their net income as stated in said petition. On the contrary they aver that the price of coal consumed by them, as well as that of all other supplies used, has increased from 25 to 75 per cent during the last fifteen years; that the wages of their employes have increased from 10 to 65 per cent; that the legislation of the different states and the national government has imposed upon them many new duties requiring increased expenditure, both for labor, equipment and structures, to meet the obligations imposed; that the conditions involved in the transportation of soft coal are now radically different from those existing ten or fifteen years ago. They allege that, considering this increased burden, they cannot furnish facilities and equipment and obtain any reasonable return upon their investment except through a moderate advance in freight charges as proposed in said tariffs.

The defendants deny that the present rates for the transportation of soft coal are high or exorbitant, and on the contrary charge that they are not sufficiently high to meet the demands made upon them.

The defendants deny that the rates in the State of Illinois are higher than those in the state of Indiana, as alleged in the petition; and they further deny that the coal from West Virginia, Pennsylvania, Ohio, Kentucky and Indiana can be sent into the State of Illinois and compete with the coal produced in this State, on such terms as prove detrimental and harmful to the producers of coal in this State, in so far as the rates of transportation are concerned.

The defendants aver that the rates to become effective June 1, 1910, are reasonable and will not in any respect exceed the reasonable return which the defendants are entitled to demand for the services rendered.

Upon the issue thus presented, the respective parties, under the direction of the commission, submitted to the commission a large amount of testimony, both oral and otherwise, and submitted to the commission for their consideration and examination briefs and arguments to sustain their respective claims; after the commission had considered all of such testimony, briefs and exhibits, they were not fully satisfied as to what action should be taken by them. The commission, realizing that the matter was of great importance to the consumers of coal throughout the State of Illinois and the manufacturers in all of the large centers, and also of great importance to the respective carriers; the commission, upon its own motion and for the purpose of determining, as far as it is possible to determine, what action it should take in order to deal fairly and justly with all of the great interests of the State involved in this question, and to the end that no injury might be done to any interest, and that the commission, when it acted, might do justice to all, and do it intelligently, they requested the several railroads to suspend the tariff promulgated by them to go into effect June 1, 1910, a reasonable time to give the commission opportunity to investigate the books and records of the respective roads, to assist them in determining the actual facts in relation to the cost of hauling coal by said roads in the State of Illinois, which request was granted.

The commission having concluded that the only proper and safe way to make such a finding and determine whether or not such tariff should go into effect was to examine the books of the respective roads and determine from the actual transactions as shown by their books the cost of carrying coal, and for the purpose of getting such information the commission employed the Mutual Audit Company of Louisville, Ky., as accountants and auditors to make such examination, and at once began the examination, with the understanding at the time that they would undertake to complete such examination by Sept. 1, 1910.

Later, the National Congress, by an act, empowered the Interstate Commerce Commission to investigate freight rates generally, and such commission announced the fact that it would make such an investigation.

It was then agreed between the commission and the railroads that we would proceed at our convenience with our own examination, but that we need not undertake to complete the same by Sept. 1, 1910, for the reason that it would be impractical for the railroads to put into effect an intrastate rate until they put in both the interstate and the intrastate rate.

In the meantime the respective railroads had filed their tariffs with the Interstate Commerce Commission and at their own request had them suspended until Nov. 1, 1910.

A few days prior to Nov. 1, 1910, the Interstate Commerce Commission suspended all interstate freight rates, except freight rates on soft coal. This necessarily would permit the tariff rates filed by the respect-

ive roads to go into effect Nov. 1, 1910. This commission, not having completed their investigation of rates, immediately made a request to the Interstate Commerce Commission to suspend the operation of such tariff on soft coal until Dec. 1, 1910. The commission, through its Auditing Company, then began the closing work of its investigation, which was completed November 20th, at which date the complete figures made by the Auditing Company for the commission, together with the general statement by the commission as to what the figures showed, were submitted to the petitioner and to the railroads, and all parties were given until Nov. 28, 1910, to examine such figures and statement submitted by the commission, at which time they were to present such arguments and reasons as might suggest themselves to them as to the correctness or incorrectness of the figures made, and the conclusions reached by the commission.

On Nov. 28, 1910, at a meeting of the commission, held for the purpose of hearing such arguments, all of the respective parties appeared before the commission and presented their reasons for and against the report and conclusions reached by the commission.

The commission submitted to the respective parties prior to such arguments and prior to their examination of the report of the auditing company the following rules, which had been adopted by them in making such investigation and examination as to the manner of making such examination. The rules submitted are as follows:

1. The expenses as assigned to the State of Illinois have been taken at the company's figures as being correct.

2. The method of division of these expenses between freight and passenger has been upon the following general lines. The wear portion of the Maintenance of Way and Structures accounts has been divided upon the weight basis, due consideration being given to the switching movement. The proportion of the Maintenance of Way and Structures accounts, independent of traffic, has been divided on account gross earnings basis.

3. The Maintenance of Equipment accounts are to a large extent allocated; where they are not, the use basis as expressed in engine or other mileage, has been used.

4. Traffic expenses are also to a large extent allocated; where they have not been, the gross earnings basis has been followed.

5. Transportation expenses are also to a large extent allocated. In a number of these accounts there are not allocations, and in each of these latter accounts, division has been made upon a factor having direct connection with the special primary expense account.

6. General expenses have been divided upon the basis of all the preceding accounts up to this point.

7. Having made the division between freight and passenger, the division of expenses between coal and other freight has been taken up on the following general lines. It has been determined how much of the total weight, live and dead, has been carried on trains for each set of traffic, and the wear of track has been divided upon this basis. In determining this weight, due consideration has been given to the switch-

ing movement and to the collecting of coal, it being recognized that the collection from the mines involves in some cases, considerable effort. The portion of the track renewal, independent of traffic, has been divided upon the earnings basis.

8. In our Maintenance of Equipment expenses, we have divided the locomotive repairs upon the basis of the use of the engines according to the weights pulled of coal and other freight, calculating the movements according to the class of train and the amount of coal upon each class of train. Switching has also been taken into account in this division. The repairs of cars has been based upon the car mileage made in each class of business, empty movement included. This information was obtained by working up the train consist on each road and on each class of train. The work equipment has been divided upon the basis of the Maintenance of Way and Structure accounts.

9. The tariff expenses have been divided upon the basis of gross earnings, save where the nature of the account showed that coal was not interested either at all or to the full value of the earning percentage.

10. Transportation expenses presented a more complicated problem and have been divided upon the following general principles. In station expenses, both labor and supplies, we have eliminated the laborers at stations, in so far as they have to do with warehousing—i. e., those who handle less than carload freights, the balance of the expenses have been divided upon the number of cars handled. Yard expenses have been divided first into the amount of yard switching due distinctively to coal and distinctively to other freight, the balance has been treated as common, and divided between coal and other freight on the basis of cars handled. Train expenses have been divided upon the coal proportion of each class of train handled, determining this by the relative train mileage of the coal for the trainmen's expenses and for the relative weights carried for the fuel and other supplies. The operation of the joint yards and terminals and of the joint track and other facilities, have been treated separately, as far as possible determining upon what seemed to be equitable basis in each case, the coal use of the facility.

11. The general expenses have been divided upon the basis of all the accounts up to this point.

12. The absorption of switching charges while a deduction from the receipts has been, for convenience sake, added as an expense, so that the rate per ton per mile may stand as noted on the rate sheet.

13. In the division of the property devoted to the coal service, two methods have been followed to obtain the desired result, one has been to consider the book value of the property devoted to railroad use, and the other to consider the proportion of the stocks and bonds representing what has been devoted to the railroad use. In making each of these apportionments to coal, the expense basis has been followed, for, having obtained the expenses by the employment of "Use Factors," we have considered that these expenses will reflect the use of the property by each class of traffic. We have then applied the same factors to the "income from other sources" and to the "charges to income" for all

matters up to interest on bonds and dividends on stock. We have given due consideration to such items as affect coal directly or affect other freight directly. We have considered in this taxes, also upon the expense basis.

14. In considering the return upon investment upon the basis of the book value as shown by the companies' reports, we have assigned the portion to the different uses upon the expense basis, wherever that portion was not distinctly assignable direct to any one class of service. These figures are shown upon the trial balance of the different companies in their reports to the State.

15. In considering the return upon investment upon the stock and bond basis, we have considered what proportion of the stocks and bonds shown upon annual report, are devoted to the railroad use of the property, assigning these stocks and bonds to the different classes of traffic upon the expense basis, as showing the use. It should be borne in mind that the expense basis is used solely because it is composed of the use factor.

Without going into details at the present time, it is sufficient to say that the figures presented to the commission by the auditing company showed conclusively that the respective roads were not receiving a sufficient price for hauling coal.

The following tabulation of the condition of the respective roads, the amount of coal hauled, the cost as shown by such tabulation, together with the amount of stock issued by the respective roads, their bonded indebtedness and the manner in which the same was treated by the commission in such examination, is as follows:

Summary of Operating Revenue, Cost of Operation, Taxes and Other Charges to Income Account, of Handling Coal in Illinois During Fiscal Year Ending June 30, 1909.

Road.	Ton miles.	Income from operation.		Operating expenses.		Operating expenses, taxes and other charges to income account.	
		Amount.	Per ton mile.	Amount.	Per ton mile.	Amount.	Per ton mile.
			<i>Mills.</i>		<i>Mills.</i>		<i>Mills.</i>
Illinois Central.....	1,021,233,142	\$3,574,316 00	3.5	\$2,881,732 16	2.822	\$2,926,699 76	2.86
C. & E. I.....	833,080,147	2,992,628 64	2.592	2,072,149 13	2.488	2,206,465 83	2.65
Chicago & Alton.....	553,928,935	1,905,886 00	3.44	1,283,234 90	2.317	1,341,844 70	2.42
C., C., & St. L.....	424,874,618	1,393,588 74	3.28	829,126 37	1.95	932,533 81	2.19
Total.....	2,833,116,842	\$9,866,419 38	3.483	\$7,066,292 56	2.494	\$7,417,544 10	2.618

Illinois Railroad and Warehouse Commissioners' Application of Above, with Addition for Return Upon Investment, viz, Interest Paid on Bonds and Allowance of Six Per Cent on Stock for Such Proportions of Each Devoted to Railroad Use.

Road.	Amount.	Per ton mile.
Illinois Central.....	\$3,604,833 81	<i>Mills.</i> 3.53
C. & E. I.....	3,050,179 81	3.668
Chicago & Alton.....	2,167,756 56	3.913
C., C., C. & St. L.....	1,219,654 15	2.871
Average.....	\$9,942,126 43	3.512

The above figures and tabulations are the result of the work of the auditing company and show in detail under the respective headings the exact condition as the auditing company found them to be.

The above figures were taken as a basis by all of the parties in interest in this proceeding before the commission and the accuracy of same was not questioned by any of the parties. The manner of the examination and what the figures really showed was argued very ably and thoroughly by counsel for the railroads, as well as counsel for the petitioners, and while both the counsel for the petitioners and the counsel for the defendant roads differed in some particulars with the conclusions reached by the commission, this was largely due to the different manner of making calculations and the different credits and debits claimed upon particular items. The commission was very materially aided by the arguments of counsel on both sides and gave their respective arguments very careful consideration from time to time, and while some of the positions taken by them may be technically correct, and as nearly correct as the plan adopted by the commission, applying any of the rules of tabulating the figures, the result will necessarily be substantially the same.

The commission realized during the investigation, more fully than it did when it began, the great importance of this investigation; they were materially assisted by the representatives of the Illinois Manufacturers' Association, by the representatives of the Association of Commerce, and by the representatives of the Commonwealth Edison Company; in the early part of the proceedings the representatives of the coal operators were present and assisted; later it was announced that they would make no further appearance, they having adjusted their matters.

It is only proper to say that during such investigation the respective railroads examined, furnished the commission for the use of its auditing company, every facility possible to make such investigation complete, and that in making such examination the auditing company representing the commission not only examined the books of the respective companies, but visited their respective terminals and operating departments for the purpose of ascertaining the absolute facts in relation to the same, and in every instance such information as the auditing company desired was furnished by the respective parties, so far as it was possible to do so.

The evidence taken in the case shows a peculiar condition in transportation affairs. It is claimed by the petitioner, and properly so, that the rates in force at the time of the filing of the petition had been in force by the respective roads from and between the respective points for many years.

The testimony in the case also shows that during a period of fifteen years the entire mode and manner of railway transportation has changed. Fifteen years ago the ordinary freight train was composed of an engine and from fifteen to thirty cars of about twenty tons capacity, while today the ordinary freight train is composed of an engine and from sixty to seventy-five cars of about forty tons capacity. It is claimed upon the part of the petitioner that in view of this increase in size of the trains and the increased tonnage, that while their expenses have increased, for these reasons the railroads today can well afford to carry coal at the same rate they did years ago.

It should be remembered in this connection that while there is some force in the statement that the increased capacity of cars and the larger engines do reduce, in a way, the expense of freight transportation, it is equally true that the railroad iron on the track of the respective railroads that carried the freight train of fifteen years ago is not sufficient to carry the train of today, and that during this period, in a large measure, the railroads have been compelled to practically rebuild their roads. It is also true that a number of the bridges that were built for the train capacity of fifteen years ago are now too light, and have been, or will have to be at once rebuilt and very much strengthened to meet the demands of the present.

It is also well to remember that the engines and freight cars of today are very much more expensive than the engines and cars of a few years ago. It cannot be forgotten that, in addition to this expense, the price of labor and fuel in every department of industry has materially increased. This has been necessitated by the increased price of living during the same period.

It is also a well-known fact that during the last few years the railroads have been required to materially improve the character of their equipment; in the interest of the safety of the traveling public, as well as their own employes, they have been required by laws, both State and National, to put on certain safety appliances, which, in the very nature of things, have been expensive. They probably have not been required to make any more expensive improvements than all other manufacturing establishments that use a large amount of machinery have been required to do in order to keep up with the times and protect their employes.

The universal demand today is for fast passenger service and rapid freight transportation; not only that, but the demand is, and properly so, that the transportation shall not only be rapid, but every possible safeguard shall also be thrown around such transportation. These demands cannot be complied with by the manufacturing industries of the country or the railroads without a sufficient income.

The commission held that in addition to the actual cost of the railroad in hauling coal that it should be allowed such a rate as to enable it to

pay its stockholders a fair per cent upon their investment, and the commission holds that that should be at least 6 per cent, and upon that basis made their finding; and that it should also be permitted to receive such compensation as to enable it to pay the actual annual interest upon the bonds sold by it for the purpose of building its road and properly equipping it.

It is said that some of the railroads have watered their stock—in other words, that stock has been issued and money received therefor and not put into the road, and therefore an allowance should not be made for any income on such stock. If this stock was in the hands of the officers who issued it, this argument would be valid and the rule adhered to; but so far as we are able to get any evidence upon this subject, it appears that the stocks and bonds of the respective railroads have been sold upon the market and purchased in a very large degree, if not entirely, by innocent purchasers, and the commission do not believe it would be just to punish them, although it should believe some stocks and bonds may have been improperly issued.

The suggestion is that the Legislature pass a law prohibiting any public corporation from issuing its bonds or stock without first making application to some proper body or commission, with a proper showing for the necessity for such bond issue, and indicate for what purpose the funds are to be used, and then empower such commission to see to it, when the bonds or stock are issued, that the money received therefrom is applied to that particular purpose named in the petition.

With all due respect to the manner of tabulation and the manner of use made of the figures by the several parties, the commission see no reason to change the manner in which we originally applied them to the findings in this case; we believe at the time, and a very careful verification of the entire matter since the hearing, only confirms our views at that time, that the conclusions reached were fair and equitable to all persons concerned.

Adopting the figures as found by the auditing company as to the actual cost of hauling coal by the four roads examined, namely, the Illinois Central Railroad, the Chicago & Eastern Illinois Railroad, the Chicago & Alton Railroad, and the Cleveland, Cincinnati, Chicago & St. Louis Railway, and assuming they are representative of all the roads, and adding thereto 6 per cent as an income upon the stock of said railroad as shown by the evidence, and the actual interest paid by said railroad upon its bonded indebtedness, the figures show conclusively that in order to receive such an income, and meet the obligations as herein stated, that the railroads are entitled, not to the entire 10 cents per ton advance asked, but to 7 cents per ton, and believing that the commission adopted the best plan at their command, and also believing that the plan adopted is as nearly correct as can be, and being fully convinced from the evidence and the facts procured that an increase should be granted, the commission allowed an advance of 7 cents per ton from and to the points indicated in the tariff submitted to them, and while the railroads had on file their tariffs increasing the rate 10 cents per

ton, they at once complied with the finding of the commission and reduced the rate to 7 cents per ton, and said tariff was put into effect Dec. 10, 1910, and is now in force in this State.

In view of the finding of the commission, as hereinabove stated, the prayer of the petitioner will be denied, and the finding of the commission, as stated, shall stand as the order of the commission.

Dated this 28th day of November, 1910.

ORVILLE F. BERRY, *Chairman*;
B. A. ECKHART, *Commissioner*;
J. A. WILLOUGHBY, *Commissioner*.

ACME CEMENT PLASTER CO.

V.

CHICAGO & ALTON RAILROAD CO.

The petition alleges that in the year 1900 an agreement or arrangement was made by the petitioner, the Acme Cement Plaster Company, with the Chicago & Alton Railroad Company and other railroads operating out of East St. Louis, for the carriage of complainants' manufactured goods shipped from points in the southwestern territory, upon the basis of a proportional part of the through rate from Acme, Texas, to the point of final destination, according to the fixed freight for movement via Chicago.

It also alleges that according to this agreement the maximum charge from East St. Louis to any point in Illinois, would not exceed 5 cents per hundredweight, and in many instances the freight charged would be less than that sum.

The testimony in the case fully justifies this statement; in fact, it is not denied by the defendant company. The testimony shows that this agreement was made with the traffic manager of the Chicago & Alton Railroad, a Mr. Wann, and was renewed with his successors down to the date of the present organization of the company.

The testimony shows that the attention of the present company was called to this agreement, and that it acquiesced in the arrangement and that it actually observed the same for quite a period of time; in fact, all of the shipments were made, based upon that agreement and the amount refunded except the ones in question, and the rate claimed, published in their tariff.

The defendant company in its answer, does not deny the facts of such an agreement, nor of their acting upon such agreement during the period alleged in the petition.

Under the law in this State, it is very doubtful whether the commission has any jurisdiction in a matter of this character, and it is quite certain that it has no power to render a money judgment, or power to direct any real payments, but under the general powers of the commission to investigate and determine questions, the commission has seen fit to

retain jurisdiction in this matter and have heard the same, together with all matters presented by the respective parties. It is perfectly clear from the testimony that the agreement set forth in the petition was made; whether properly or improperly, the commission does not pass upon. Also that it was acted upon for a number of years; that it was an agreement that the petitioner had with this road and all other roads out of East St. Louis over which it shipped.

It further appears that the petitioner manufactured, sold and shipped their goods upon the basis of this contract for a number of years. It is equally true from the evidence that the cars in question where refund freight is asked, were shipped under this arrangement, and the goods sold based upon the freight charges, expecting the refund of same as heretofore.

It is also clear from the testimony that no notice was given the petitioner that the agreement would be abandoned, but they simply, without any notice, refused to refund the amount in question and refused to extend the agreement further. That the railroad had a right to refuse to longer continue the contract, there can be no question; but as a business proposition, the commission do not believe that the defendant was justified in receiving these cars and shipping the goods under the agreement, and then refuse to make the refund. If they desired to discontinue this arrangement that had been in operation for a long period of time, they should have, under all business rules, it seems to the commission, given proper notice of such cancellation of the contract, and then the petitioner could have shipped their goods on this road or other roads as they saw fit, and if they then shipped upon this road, they would have no claim upon them for any refund.

While we have no power whatever to render a judgment for the amount, or even direct that the railroad shall refund this amount, the commission believe that the petitioner is entitled to the amount that would have been refunded under the original agreement.

Dated at Springfield, Ill., this 1st day of February, 1911.

O. F. BERRY, *Chairman.*

S. J. FOWLER COAL & COKE CO.

v.

SOUTHERN RAILWAY COMPANY.

This is a claim of the S. J. Fowler Coal & Coke Co. for refund of 5 cents overcharge on switching in East St. Louis by the Southern Railway Company, for the period dating from 1906 up to and including the early part of 1910. There is no disagreement about the facts in this case. The rate referred to only applies to coal coming from other roads and delivered to the Southern Railway for delivery to industries upon their line in East St. Louis. The rate on coal in the Belleville district was 32 cents per ton; the Southern Railway had a charge of 15

cents per ton for switching from the connections with other roads to the industries on their track. Of that 15 cents, 10 cents was paid by the road upon which the coal originated, and 5 cents was charged to and paid by the Fowler Coal & Coke Co. on the cars received by it. There is no dispute that the 5 cents charged was within the maximum rate under Rule No. 23. It is insisted by the Fowler Coal & Coke Co. that the entire 15 cents should be counted in this hearing, and if so, would make the charge more than the rule allowed, or above the maximum rate. In this view the commission cannot agree with the petitioner, and unless they have paid a greater rate, in the judgment of the commission, than the rule authorizes, they cannot be heard to complain. It is conceded that the 5-cent rate is clearly within the rule; that being true, a claim for refund, in the judgment of the commission, could not be maintained.

The commission, however, have no power or authority under the law at present, to order a reparation in any event, and it also appears from the record that the entire charge has been abandoned by the road since the 1st of January last, and for the reasons indicated herein, the petition will have to be dismissed. Petition dismissed.

By order of the commission, this 29th day of March, 1911.

O. F. BERRY, *Chairman.*

VANDALIA RAILROAD COMPANY

V.

MULLEN-BLACKLEDGE-NELLIS Co.

The Mullen-Blackledge-Nellis Co. operate a tomato canning factory at Effingham, Ill., located on the Vandalia terminal about one and one-half miles from the junction of the Illinois Central Railroad. Tomatoes are grown and purchased along the Illinois Central Railroad at different points from five to fifteen miles from Effingham, and brought to Effingham on the Illinois Central, turned over to the Vandalia Railroad for them to switch to the warehouse or factory at that point. The tomatoes being in crates, are taken out of the car and out of the crates, and the crates are loaded into same car they came in and sent back to the Illinois Central Railroad to be returned to the points where the tomatoes are grown and loaded. For the switching from the Illinois Central Railroad to the warehouse or factory, a rate is paid to the Illinois Central, which absorbs charge of the Vandalia Railroad for such amount.

The Vandalia Railroad Company make a charge of \$2.00 per car for switching or returning the car to the Illinois Central, containing the empty tomato crates. It is contended by the Vandalia Railroad that when the crates are replaced in the car, it then becomes a loaded car, and they are required under their tariffs to make a charge for the switching, it being a loaded car.

The position of the Mullen-Blackledge-Nellis Co. is, that tomatoes are a product that cannot be shipped in bulk, entirely different from other vegetables, cabbage or something of that kind, which may or may not be shipped in bulk at the convenience of the shipper. They claim that crates thereby being necessary, they become a part of the equipment of the car, because it is necessary to use them in shipping the tomatoes, and the crates being a part of the equipment of the car for shipping purposes, they insist that the Vandalia Railroad Company should return the car of empty crates, which they had delivered to them full—in other words, that the car with the empty crates should be returned to the originating road and no charge made to them.

The evidence shows that the crates are owned by Mullen-Blackledge-Nellis Co., and not by the railroad, and the commission hold that they are not part of the equipment of the car. Many other products are shipped in crates, boxes, kegs, cases or barrels, and the return of them is charged for, sometimes at a special rate; sometimes they are returned free, but not because they are a part of the equipment of the car, but because of an arrangement made with the road.

The commission hold that the Vandalia Railroad is entitled under the law, if they so desire, to charge a reasonable price for the return of the car containing the empty crates.

The commission further holds that the Vandalia Railroad, if they desire to do so, are not prohibited from making an arrangement to return the crates free to the originating road, provided they would, under similar circumstances and for the same movement under the same conditions, do that for all other establishments. The entire matter can be arranged between the respective parties by contract, subject to the conditions and limitations above named.

The matter submitted to us is not one where the commission are required, or should, in its own judgment, act arbitrarily, or could enter a definite order in relation to such charges.

Case stricken from the docket.

By order of the commission, this 29th day of March, 1911.

O. F. BERRY, *Chairman.*

RAILROAD AND WAREHOUSE COMMISSION

ON RELATION OF

JULIUS ROSENBERG, GRANITE CITY, ILL.

V.

CHICAGO, PEORIA & ST. LOUIS R. R. Co.

The facts in the above case as shown by the record are, that the complainant, Mr. Rosenberg, lived at Granite City; he has a farm which he frequently desires to visit, going from Granite City to Belltrees, which is about twenty-six miles from Granite City. Belltrees is a flag station,

no depot or other facilities there, and the fast train out of St. Louis in the morning does not stop at that station. The passenger traffic is very light, and under the record the defendant road would not be justified in stopping, generally speaking, its fast trains at this point. Its present rule is to stop the train at Belltrees if there are two passengers for that point, and it is complained that in order to get the train to stop, the complainant has to buy two tickets, or, in other words, pay double fare.

It will be noted that the complainant in this case is filed, not by a resident of Belltrees or vicinity, but by a person who lives in another city, and the complaint is not as to transportation from Belltrees, but to Belltrees. The general principle that railroads are required to comply with, is to take care of the people in the vicinity of the stations along their line of road. The record shows that Belltrees is in the neighborhood of thirty miles from East St. Louis and thirty-five miles from St. Louis; naturally the largest number of passengers would go from Belltrees to those larger cities. The railroad has provided a train going into St. Louis through Belltrees, which stops there at about 8:30 in the morning, arriving at St. Louis an hour later, and a return train that stops, arriving at Belltrees about 6:00 o'clock in the evening. This gives the people of Belltrees and vicinity very much better service than many have similarly situated; and the rule required at least two passengers before a stop will be made at Belltrees, under the law and the facts in this case, does not seem to the commission to be an unreasonable one.

Before this commission could make an order requiring trains to stop at Belltrees regularly from St. Louis early in the morning, the record would have to show very conclusively that it was reasonable to require such stop, and under the record in this case, the commission are of the opinion that it would not be a reasonable rule to require the train to stop, therefore the prayer of the petitioner is denied.

By order of the commission this 12th day of April, 1911.

O. F. BERRY, *Chairman.*

RAILROAD AND WAREHOUSE COMMISSION

ON RELATION OF

THOMAS ROCKEY

v.

ILLINOIS CENTRAL RAILROAD COMPANY.

The complaint in this case states that the complainant has a warehouse on lot 7 and 8 in block 20 in the original town of Freeport, Ill.; that he has requested the defendant company to be placed on its switching tariff and to have cars spotted for unloading in the street by the defendant company and they have refused.

The evidence in the case shows that the track referred to was originally laid for the purpose of furnishing certain manufacturing establishments

on one side of the street with a track for the purpose of loading and unloading their goods. This track is laid on one side of the street closely abutting the property of said manufacturing establishments so the establishments referred to could load or unload freight received or sent out without using a team in the street. The contention of the complainant is that the defendant company should spot cars on the street in front of his property on the opposite side of the street and permit him at that point to unload or load his goods into or from said cars. In other words that he may be permitted to use the same as a team track.

The ordinance introduced in evidence in the case clearly shows that the intention of the city of Freeport was to permit the laying of the track on one side of the street so close to the abutting property that the cars placed hereon could be loaded and unloaded without the use of a team. Section 7 of the ordinance introduced in evidence and under which the track referred to was built reads as follows:

"Said track shall not be used for what is commonly known as a team track; that is to say, said track shall only be used for the purpose of delivering freight to or receiving from the property fronting or abutting thereon."

From the reading of this section it is manifest that the language used, "fronting or abutting thereon," means fronting or abutting the track on the side of the street where the same is laid and means that the goods received shall be loaded into or received from said cars without the use of a team.

It is contended that other parties use said track as a team track; that is, load and unload freight from cars with teams in the street. This the defendant denies and states if it is being done, it is without authority. The evidence, I think, shows that said track is so used at times. That, however, does not change the fact that under the franchise authorizing the track to be laid they are prohibited from so using it and that it is a violation of the ordinance of the city to do so. And the commission hold that the railroad company would have no right to permit some persons to use said track as a team track and refuse others and it is their bounden duty to treat all alike and, under the ordinance, we believe it is their duty to prohibit the use of said track as a team track; and it further might be said that the city apply the same rule. They should permit all persons to use it as a team track or permit none to use it.

In addition to that there appears in the record a distinct statement by the city attorney of the city of Freeport giving notice to the railroad company to not use or allow to be used such track as a team track. It is also true that there is a letter in the record from the mayor of the city of Freeport to the complainant saying that he would authorize the railroad company to permit the complainant to use the street for such purposes. In fact, neither the mayor nor the city attorney would have authority to in any way vacate this ordinance. It was stated at the hearing by the defendant that if the city would by the city council amend the ordinance in such a way as to authorize the defendant to use said track as a team track, that they would be glad to so comply with the request of the complainant.

Whatever may be the facts of the matter as to what the city of Freeport should do in relation to this matter of amending or changing the ordinance, or whatever their views are as to the advisability under present conditions of allowing it to be so used, it is sufficient to say that under the franchise ordinance authorizing the laying of this track, the commission holds that it cannot be used as a team track and that the defendant road would have no authority to spot cars on said track and permit the complainant to load or unload freight by team. The commission holds that the fronting or abutting on refers to the track and not to the street and in view of this finding and holding there is but one result that could follow, the commission for want of power to grant the prayer of the petitioner, must deny the prayer and dismiss the petition.

It is therefore ordered by the commission for the reasons herein above given that the said petition be, and the same is, dismissed.

Dated this 28th day of June, 1911.

O. F. BERRY, *Chairman.*

IN THE MATTER OF THE HEARING OF EXPRESS COMPANIES BEFORE
SAID COMMISSION.

This cause coming on for final hearing and disposition, the commission having given due notice of such hearing to the express companies of the State of Illinois, and the time and place of such hearing, and the said express companies being represented before said commission, and the commission having jurisdiction of the subject matter of such investigation and hearing, as well as of all of the parties in interest, viz: the express companies or carriers of express, as defined in an Act entitled, "An Act regulating express companies and carriers by express, operating within the State of Illinois," approved June 9, 1911, and in force July 1, 1911, and having heard the testimony and arguments of counsel and being fully advised in the premises, it is hereby ordered, adjudged and decreed by the said commission that the maximum schedule of rates and charges for all of the express companies or common carriers doing an express business, operating within the State of Illinois, known as the Illinois Railroad and Warehouse Commissioners' Express Tariff No. 2, which is marked "Exhibit A" and made a part of this order, be and the same is hereby approved and made the schedule of maximum rates and charges for the government and control of all of the express companies and common carriers doing an express business or operating as such within the State of Illinois.

The commission further finds that the rates named in said schedule by the commission to be reasonable and just rates and maximum charges for each kind of property, money, parcels, merchandise and other commodities for transportation by each of said express companies or common carriers doing an express business within the State of Illinois on intrastate shipments between station within the State of Illinois.

It is further ordered that the said schedule of rates, known as "Exhibit A," and hereto attached as hereby established, are reasonable

maximum rates and charges for the transportation of merchandise and other property by all of the express companies or common carriers doing an express business and operating between all of the stations of the respective lines of railroad operated over by them within the State of Illinois.

It is further ordered and directed by the commission that every express company and common carrier doing an express business, operating within the State of Illinois, is hereby required and directed to put into effect rates not to exceed the rates as shown by "Exhibit A" and the schedule of rates, known as the Illinois Railroad and Warehouse Commissioners' Express Tariff No. 2, effective in the State of Illinois on the first day of October, 1911.

It is further ordered by the commission that the said several express companies prepare and submit a form of receipt for each shipment and a receipt for moneys paid for the charges for the transportation of any article or thing to be given upon receipt or payment of said charges and submit such receipt for examination and approval by this commission, on or before Sept. 15, 1911.

It is further ordered by the commission that the said several express companies proceed to establish through routes and joint rates and proper classification, also a division of such rates and to apply as the maximum to or upon shipments over the routes of two or more express companies or common carriers by express, between points in the State of Illinois, and that such joint rates and routes and proper classification be submitted for examination and the approval of this commission on or before Sept. 25, 1911.

It is further ordered by the commission that the said several express companies print in clear and legible type a schedule of rates and charges for the transportation of such moneys, merchandise, parcels and other commodities and things from every point within this State on its own line to every other point in this State on its own line, or when in connection with any other express company or common carrier by express to every other point of carrier by express, where joint rate is established, and that such schedule and charges shall be kept in each office or place of business of such express company or common carrier by express, within convenient access and for the inspection and use of the public during customary business hours and that five copies of such schedule of rates and classification be filed with this commission at their office in the city of Springfield, Ill.

It is further ordered by the commission that each and every express company and common carrier by express file with this commission a certified copy of all contracts or agreements now existing or hereafter entered into by or between him or it and any other express company or common carrier by express or any railroad company or carrier by water, operating within the State of Illinois, on or before Oct. 1, 1911.

By order of the commission this sixth day of September, A. D. 1911.

O. F. BERRY, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

No. 1045.

PEORIA, BLOOMINGTON & CHAMPAIGN TRACTION COMPANY

v.

PEORIA & PEKIN UNION RAILWAY COMPANY.

No. 1014.

DANVILLE, URBANA & CHAMPAIGN RAILWAY COMPANY

v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RY. CO.

No. 1061.

JOLIET & SOUTHERN TRACTION COMPANY

v.

MICHIGAN CENTRAL RAILROAD COMPANY.

No. 1062.

JOLIET & SOUTHERN TRACTION COMPANY

v.

CHICAGO & ALTON RAILROAD COMPANY,

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY,

WABASH RAILWAY COMPANY.

No. 1076.

MINIER GRAIN COMPANY, ET AL

v.

PEORIA & PEKIN UNION RAILWAY COMPANY.

The principle involved in case No. 1045, is substantially the same as is involved in all the above entitled cases, and the findings in one case and the ruling upon the principle involved, must necessarily settle the questions involved in each of the above cases. While the facts will vary somewhat in the respective cases, yet not sufficiently, it appears to us, to justify a separate opinion in each case, and the finding in case No. 1045 and this opinion shall be considered as the finding and opinion in each of the above entitled cases.

These several cases have been pending before our commission for a considerable length of time. The questions involved are not new ones, but in some respects are difficult ones, and to apply the legal construction given to the principle involved by the courts in the past and present, as well as the statutory construction, is not as difficult as to determine the practical application that should be given to the principle.

The enforcement of the law, as laid down by the courts, in some respects works a hardship in transportation affairs, and it is a question that sooner or later must be solved, either by legislation or the adoption of some general rule by the transportation companies, and while we feel that at times the enforcement of the law upon this subject may work a hardship, it is only the business of the commission to determine under the facts what the law is.

In the first place, let us consider what is required of the defendant companies. Broadly speaking, they are asked to accept cars brought into the city of Peoria by the Traction Company, in such a manner as would require the appropriation of the defendant's terminal facilities to the movement of the cars to destination, and their storage on terminal tracks while being unloaded. What duty the defendant company may owe to the owner of the cars and their contents, is not material. The question is, whether the defendant company under the law, is compelled to give the use of its terminal facilities to the cars of another company that has no terminal facilities, and where the defendant has received no part of the haul.

The Interstate Commerce Act may be considered possibly, the most modern piece of legislation on transportation, and its general purpose was to require railroad companies to afford "all reasonable, proper and equal facilities" for the interchange of traffic between the respective lines of road and for the "receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith." Yet in that Act, the principle involved here, is recognized, and section 3 in that Act was intended to restrict the discretion in the use of a carrier's own property allowed by common law and to require the giving of greater facilities to connecting companies demanding it, and on that line is very broad; yet the makers of that law, recognized that a transportation company that owns terminal facilities, should have the right to control their use and to reserve them to its own business or to such as it might see fit to allow the use, and the last clause of said section 3 reads as follows:

"But this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

Our own Legislature, in enlarging the powers of this commission, after a lengthy discussion of this question and its presentation by the parties in interest from every angle, in section 26, after giving very large powers to the commission, concluded that section with the following words:

"But this shall not be construed as requiring any common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

In the case of *A., T. & S. F. R. R. v. D. & N. R. R.*, 110 U. S., a bill was filed to compel the defendant company to unite with the complainant in forming a through line of railroad transportation, including the interchange of cars and the like. The defendant had an arrangement for through business with the Denver & Rio Grande. When the complainant built its road, it connected its track with the Atchison, Topeka & Santa Fé in Pueblo, at a point about three-quarters of a mile from the Union Depot. The complainant erected, at its junction, platforms and other accommodations for the interchange of business, and before commencing suit, demanded that the defendant receive its cars and allow other cars to come to the complainant's road and do a general interchange business. The request was refused. The constitution of Colorado contains many provisions relating to this question, among others, requiring that railroad companies shall have the right to intersect, connect with and cross other railroads, and that no railroad shall give any preference to any other individual or corporation. The laws of Illinois have many similar provisions. In that case the court, among other things, said:

"Railroad companies are created to serve the public as carriers for hire and their obligations to the public are such as the law attaches to that service. The only exclusively constitutional question in the case is, therefore, whether the right of one railroad company to connect its road with that of another, which has been made part of the fundamental law of the State, implies more than a mechanical union of the roads so as to admit of the convenient passage of cars from one to the other. The claim on the part of the Denver & New Orleans Company is, that the right to connect the road, includes the right of business intercourse between the two companies, such as is customary on roads forming a continuous line, and that if the companies fail or refuse to agree upon the terms of their intercourse, a court of equity may, in the absence of statutory regulations, determine what the terms shall be. Such appears to have been the opinion of the circuit court, and, accordingly, in its decree a compulsory business connection was established between the two companies and rules were laid down for the government of their conduct towards each other in this new relation. In other words, the court has made an arrangement in the course of the business of these companies such as in its opinion they ought to have made for themselves."

The court, in this opinion, referred at length to the legislation and constitutional provisions along that line in various states, and concluded as follows:

"To our minds it is clear that the constitutional right in Colorado to connect railroad with railroad does not of itself imply the right of connecting business with business. The railroad companies are not to be connected, but their roads. A connection of roads may make a connection in business convenient and desirable, but the one does not necessarily carry with it the other. The language of the constitution is, that railroads may 'intersect, connect with or cross' each other. This clearly applies to the road as a physical structure, not to the corporation or its business."

Clause 6 of section 20, chapter 114, R. S. of Illinois, provides as follows:

"To cross, intersect, join and unite its railways with any other railway before constructed at any point on its route and upon the grounds of such other railway company, with the necessary turn-outs, sidings, switches and other conveniences in furtherance of the object of its connections. And every corporation whose railway is or shall be hereafter intersected by any new railway shall unite with the corporation owning such new railway in forming such intersections and connections, and grant the facilities aforesaid, and if the two corporations cannot agree upon the amount of compensation to be paid therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined in the manner prescribed by law."

Paragraph 45, chapter 114, Hurd's R. S., provides:

"All railroad companies incorporated or organized, or which may be incorporated or organized as aforesaid, shall have the right of connection with each other and with the railroads of other states on such terms as shall be mutually agreed upon by the companies interested in such connection."

These sections are very much like the quotation from the Colorado constitution and statutes and other states referred to by the court in the last above mentioned opinion, and we conclude that this refers to a physical connection of the tracks so as to admit of a convenient passage of cars from one to another, but is not broad enough to imply the right to connect the business of one corporation with the business of another corporation.

The laws of the state of Texas require every railroad to receive from all other railroad companies, at any place where they may cross, all freights and passengers and transport the same to destination or to the next connecting or cross line in the direction of the destination. In passing upon a similar request as herein named, in the case of G. & I. Ry. v. T. & N. O. Ry. (Tex.), 56 S. W., 328, the court says:

"In truth, there is nothing in the article to justify the conclusion that one railroad may be required to perform the work of switching and transferring freight to other lines at a given point. If such were the case, every railroad company which is provided with yards and switches through which it connects with other roads for the purpose of receiving and discharging freights on its own line, could be required to carry on the business of a transfer company and assume the responsibilities of that business. If such had been the intention of the legislature, it would have used some language to express it. The scheme of our law is to give to the citizens full benefit of railroads as public highways. In furtherance of that purpose, each railroad is required to receive from every other railroad connecting with it, all freights destined to a point on or beyond its line and a like duty is imposed upon every connecting line between the initial point and the place of delivery. Neither article 4535, nor any law that we have been able to find, imposes upon railroad companies the duty, or confers the power, to perform the service of transferring for

other corporations freight, in the transportation of which it does not participate, and courts cannot, by construction of the statute, add duties and responsibilities to those prescribed by law."

The New York statute provides as follows:

"No preference for the transaction of the business of a common carrier upon its cars or in its depots or buildings or upon its grounds shall be granted by any railroad corporation to any one of two or more persons, associations or corporations competing in the same business or in the business of transporting property for themselves or others."

In construing this section, the court, after reviewing many decisions, held that because a railroad owning terminals and allowing certain other companies to use its facilities, it was not bound thereby to grant a similar use to every other company applying for it.

The case of *C. & N. W. v. The People*, 56 Ill., was a proceeding by mandamus to compel a railroad company to deliver at the elevator of the railway, whatever grain in bulk might be consigned to it upon the line of their road. The elevator was situated upon the track used by the company in connection with the business of one of its divisions exclusively, but could be reached from the other division of the same road. The court denied the suit on the ground that the defendant was not bound to deliver at such elevator grain brought to Chicago upon the division in connection with which the elevator was not used, although it was possible to deliver the grain at such elevator.

In the case of *People v. C. & A.*, 55 Ill., in speaking of a similar case, the court says:

"The return in this case shows and the fact is admitted by the demurrer that the respondents had provided by contract with other parties a warehouse on their own track ample in capacity to contain all grain ordinarily transported in bulk over their line of road, having all the necessary machinery and appliances for speedily receiving, unloading and returning the cars in which it is transported and have guarded consignors of such articles against imposition by a covenant that the charges made at such warehouse shall not exceed those of other warehouses in the city of Chicago. A delivery, therefore, of grain in bulk to such a warehouse, if consigned to any other warehouse on the line of their road, would be a fulfillment of the obligations resting upon them to carry and deliver such freight. * * * As they cannot be compelled to transport the grain beyond their track or off it, so neither can they be compelled to receive it for such purpose."

See, also, *Oregon Short Line v. Northern Pacific*, 51 Fed., 465., and *L. & N. R. R. v. Central Stock Yards Co.*, 212 U. S., 132.

It is contended by counsel for Minier Grain Co. with much earnestness and much ability "that under the Constitution and under the common law, a railway is a common carrier and its tracks constitute a public highway for the transportation of all merchandise upon the payment of a reasonable carrying charge which should be equal to all persons for the same character of merchandise."

This contention would be unquestionably good, if it applied to a railroad as such, or if the defendant received any part of the haul of

the cars tendered, but the courts make a clear distinction between railroads as such, and their terminal facilities, and while counsel for the petitioner in case last above quoted, presents many reasons from a practical standpoint, why the defendant company should receive the cars of the petitioner in this and other cases, these questions must be solved some other way at present, as it seems to us a clear weight of authorities is against the granting of the prayer of the petition.

It is also contended that it is not only within the power of the commission to grant the prayer of the petition, but it is the duty of the commission to enforce the laws of this State relating to railways; that the laws of this State relating to railways embrace not only the statutory law but also the Constitution of 1870, and also the common law, so far as applicable here. And, in concluding their brief, counsel say:

"We submit further that under the Constitution and under the common law, a railway is a common carrier and its tracks constitute a public highway for the transportation of all merchandise upon the payment of a reasonable carrying charge which should be equal to all persons for the same character of merchandise."

The proposition as stated above is true; it is the business of the commission to enforce the laws of this State along these lines, and the commission would be very glad, indeed, if it were possible for it to find some way by which a practical and equitable solution of the difficulties presented by the petitioners might be determined, and it is hoped and believed that some such a solution of this, as well as many other important transportation problems, may be at an early date, adjusted by the transportation companies.

The commission believes that, so far as it is possible to do so, transportation companies in the interests of the entire people, should accommodate each other in order to facilitate the rapid transportation of the products of the country. The sooner common carriers learn and appreciate the fact that there is room in the world for all of them, and that their own business, as well as the community, can be better served by making a fair and equitable arrangement for the interchange of business, the sooner all of them will be in favor with the people, and will be accomplishing the purpose for which they are chartered by the State. The signs of the times are all pointing to such an adjustment of conditions, and a general and harmonious working together of all common carriers, but that time has not yet arrived, and without reference to what our feelings might be in this matter in relation to the acceptance of freight in carloads by any common carrier from another, or the receiving at terminals the cars of other roads, we believe the law is such that in the enforcement of it we are compelled to deny the prayer of the petition in each of the respective cases.

Prayer of the petition denied.

By order of the commission this 25th day of September, 1911, dated at Springfield, Ill.

O. F. BERRY, *Chairman.*

DUNCAN, DOYLE & O'CONNOR

v.

I. C. R. R.

The complaint in this matter arises over the amount charged by the railroad company for switching certain cars of sand and gravel from the C., B. & Q. tracks to the I. C. tracks in the city of LaSalle. The shipment originated at Buda and the material was used in the construction of the Mine Rescue Station in LaSalle, which is situated on the Illinois Central tracks. The charge made, as shown by the record, was 18 cents per hundredweight for the sand and 23 cents per ton for the gravel.

It is the contention of the complainant that the proper charge for this switching is fixed by this commission under Rule No. 23 and under the head of "Industrial Switching," and, that under that rule, the maximum for each railroad for connecting line switching where the distance does not exceed three miles shall not exceed \$2.50 per car.

What is known as Rule No. 23, issued by this commission some time ago and put into force, was enjoined in the Federal Court by a number of roads, including the roads in question, and that rule is not in operation, the case being still pending.

It is contended by some that being true, that old Rule No. 23 is in operation. The commission do not believe that old Rule No. 23 is in force and effect and are of the opinion that if in effect would not reach the question arising by reason of this complaint.

The matter is of such importance that the commission feel called upon to state some of the facts in relation thereto upon which they base their ruling in the case. The complaint alleges, as I have heretofore stated, excessive rates charged for hauling certain cars from the Illinois Central connection with the C., R. I. & P. Railroad to their team track at LaSalle, the cars being assigned to Noonan Brothers and shipped from Buda, Ill., via C., B. & Q. Railroad. The record shows that the latter road reaches LaSalle and could have made delivery on its own team tracks, but Noonan Brothers requested delivery on the tracks of the Illinois Central. They hauled the cars in accordance with the instructions given them by the C., R. I. & P., which is the indeterminate connection at LaSalle between the C., B. & Q. R. R. and the Illinois Central and charged the local rate as per the commission's schedule.

The complaint is that the Illinois Central did not accept these cars and make delivery on their team track at the same rate as is made for switching for firms having industry tracks.

The action of the Illinois Central in this matter is in accordance with the general practice of all roads in not furnishing their team track facilities to connecting roads, it being the almost universal custom of

carriers to reserve their team track for the loading and unloading of freight on which they receive a road haul, and on which they are obliged to furnish adequate track facilities to point of destination.

It would seem from the record that Noonan Brothers have been treated no differently than any other shipper who demands the use of the team tracks of a working line. Whatever may be the law, if Rule No. 23 were in force the commission at this time refrains from passing upon. Applying all other rules and the law in the case in force at this time, the commission are of the opinion that the charge was not improperly made.

Had the shipment been consigned to some one having private industrial side tracks located on the Illinois Central at LaSalle, the charge for handling at the Illinois Central would have been on the switching charge basis, as is provided for regularly and legally in printed tariff. Some few transportation lines in this State at certain points and in specific yards, permit the unloading of shipments on team tracks based on switching movement charge, in which case there is no question that our Rule No. 23, if not enjoined, would apply. In the main, however, the Illinois transportation lines decline to open up their team tracks or other terminal facilities devoted to the use of the public in general, to other lines engaged in like business, except wherein the charge for service will be made on the basis of a road haul rate, or, in other words, at local distances mileage rate or commodity rates that prevail for distance haul.

In this contention the transportation lines seem to have the support of the Federal Commission, as well as the ruling of the courts. You will note that in section 26 of the Revised Railroad and Warehouse Commission Bill, effective July 1, 1911, that it expressly provides that common carriers will not be required to give up the use of their tracks or terminal facilities to another carrier engaged in the same business.

Under the facts and the law, as they appear to this commission, the complaint will have to be dismissed.

By order of the commission, Aug. 29, 1911, dated at Springfield, Ill.

O. F. BERRY, *Chairman*.

RAILROAD AND WAREHOUSE COMMISSION

ON RELATION OF

C. H. BOWLES, SHOP CREEK, ILL.

v.

ILLINOIS CENTRAL R. R. Co.

Complaint—Rate on milk, Shop Creek to Springfield, Ill.; filed Aug. 10, 1911.

Appearances—For the complainant, C. H. Bowles; for the defendant, J. G. Drennan, District Attorney.

Case heard Oct. 3 and Nov. 7, 1911.

Finding of commission entered Dec. 14, 1911, as follows:

This is a complaint in relation to the rate charged upon milk in cans by the defendant road from Shop Creek to Springfield. The record shows the rate charged is 21 cents for an eight-gallon can, and the distance is thirty-seven miles. The testimony shows that the road is hauling same class of cans a longer distance for the same, and in some instances a less rate, and upon first thought it would seem that there is a discrimination in favor of the long distance, but it should be remembered that the principal trouble and expense is not the hauling of the milk, but the handling of it, and it takes the same work to handle it and haul it thirty-seven miles as to haul it fifty-six miles.

The rate fixed by the New York Commission recently, in a very lengthy and well-prepared tariff, was 23 cents for a distance up to forty miles and 26 cents between forty miles and 100 miles, and so on. This was a very well considered case and has been followed in many of the states as a basis for this class of freight. The terminal expenses are the same for a thirty-seven mile haul as they are for a 100 mile haul. The price complained of also includes the return of empties to the shipper free, and while from the evidence it would appear that the defendant road has hauled the same sized can of milk a longer distance for the same or a little less money, it is equally true that if we should undertake to re-arrange the tariff, a great many changes would have to be made, and while the commission can see how the complainant may feel that the rate is a little high, yet everything considered, the commission does not feel that it is sufficiently high to justify, at this time, a re-arranging of the maximum rates. The commission will probably, at no distant date, take up the entire matter for consideration.

The prayer of the petition will therefore have to be denied.

By order of the commission this 14th day of December, 1911, dated at Springfield, Ill.

O. F. BERRY, *Chairman.*

RAILROAD AND WAREHOUSE COMMISSION

ON RELATION OF

EAST SIDE PACKING COMPANY

V.

VANDALIA RAILROAD CO.

Complaint—Assessment of "Car Rental" charge of \$2.00 per car in addition to regular switching charges on shipments from plant of complainant to various points within switching limits of East St. Louis, Ill., filed July 8, 1911.

Appearances—For the complainant, Sherman E. Wilson, Traf. Mgr. and W. E. Moulton, Attorney; for the defendant, T. W. White and R. H. McAnulty, Attorneys.

Case heard Aug. 8 and Nov. 7, 1911, Jan. 2, 1912.

Findings of commission entered Jan. 18, 1912, as follows:

The complainant herein conducts a packing plant at No. 1250 North Second st., in the city of East St. Louis, situated on and adjacent to the tracks of the defendant railroad company. The complaint charges that the complainant shipped from its plant numerous car loads of packing house products and other commodities to various points within the switching limits of the city of East St. Louis, in the State of Illinois; that the defendant Railroad Company performed the services of moving such cars from said plant to junctions with various other lines for movement to destination, for which service defendant company demanded and collected a charge of two dollars per car, which they termed "Car Rental," and in addition to which charge, they demanded and collected three dollars per car for switching charges.

It is charged and claimed that the assessment of the "Car Rental" charge is unlawful, unreasonable and unjust.

The answer of the defendant company sets up a number of defenses:

First—That this commission has no jurisdiction over the matters and things set forth in complainant's petition, for the reason that the Vandalia Railroad Company as a common carrier, is not required to perform merely switching service as was done in this case, and was doing voluntarily what the law did not require it to do as a common carrier, hence it could impose such terms as it desired for the service performed and for furnishing cars, and those terms could not be subject to review or adjustment by this commission;

For the further reason that a common carrier cannot be compelled to open its industrial sidings, public team tracks and other terminal facilities to another common carrier, and because said railroad company could not compel the National Stock Yards and Merchants Bridge to handle cars switched by the Vandalia Railroad Company for the East Side Packing Company to industrial tracks on the line of the National Stock Yards and the Merchants Bridge, then the Railroad and Warehouse Commission cannot compel the Vandalia Railroad Company to take cars for points on the line of the National Stock Yards and the Merchants Bridge, or fix the terms upon which the Vandalia Railroad Company shall take them.

Second—The answer further claims that the charges made by it of two dollars in addition to the switching charge, as referred to in complainant's petition, is entirely just and reasonable, and that it cannot afford to furnish for nothing a car from which it gets no revenue in the shape of a road haul.

Third—That the charge of two dollars per car in no way infringes upon any rule adopted or laid down by the Railroad and Warehouse Commission of Illinois, and if any such rule should be made requiring the Vandalia Railroad Company to abolish the charge of two dollars

per car, such rule would be beyond the jurisdiction of the commission and contrary to the provisions of the Constitution of Illinois and contrary to the provisions of the Constitution of the United States.

As to the question of jurisdiction, the answer admits that the defendant road is a common carrier.

Section 20 of the Amended Act in relation to the Railroad and Warehouse Commission, in force July 1, 1911, reads as follows:

"Said Railroad and Warehouse Commission is hereby given jurisdiction over all common carriers within this State."

Section 29 of the same Act provides:

"The commission shall have power and is hereby authorized to compel physical connections between railroad companies and to fix and establish reasonable switching rules and regulations and establish reasonable limits for said switching and reasonable rates therefor."

Section 31 of the same Act provides:

"The commission are hereby empowered and authorized to hear and determine all questions arising under this Act."

Section 24 of the same Act provides:

"It shall be the duty of every common carrier subject to the provisions of this Act, to provide and furnish such transportation at reasonable rates upon an order made by the Railroad and Warehouse Commission upon proper application and proper showing of the necessity therefor upon a hearing before the commission."

Section 21 of the same Act provides:

"The term 'common carrier' used in this Act includes all railroad corporations, express companies, steamboat lines, or other common carriers by water, private car line companies, sleeping car companies, fast freight line companies, and shall also include every other corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, operating or managing any such agency for public use in the conveyance of persons or property within this State."

Section 22 of the same Act provides:

"The term 'railroad' used in this Act includes every railroad, other than a street railroad, by whatsoever power operated for public use in the conveyance of persons and property for compensation, with all bridges, ferries, tunnels, equipment, switches, spurs, tracks, depots and power stations, and terminal facilities of every kind, used or operated by any such railroad; and also all passenger or freight depots, yards, docks and grounds used by any railroad in the transportation of passengers or property."

If the contention of the defendant company was sustained, it would be useless to go into the question further, and hence we dispose of that proposition first in its order, and in view of the above quotations and the law as we understand it, the commission holds that it has jurisdiction of the subject matter and parties to this proceedings, and has the power to determine whether or not the charges made by the defendant road are proper charges under the law of this State.

The evidence in the case and the arguments of counsel present a number of questions which are not necessary for the commission at this time, to consider, as they are not pertinent to the real question at issue.

There is but one proposition involved in this case, and it is only necessary for the commission to consider that one proposition, which is presented in the record, namely:

Has the defendant railroad company the legal right, under the law, in addition to the three dollar switching charge for transporting cars from the plant of the complainant to other plants or other terminals for further transportation, to make an additional charge of two dollars for "car rental," as set forth in the petition, and admitted by the defendant company?

The question of whether the two dollars additional charge, if legal, is reasonable or unreasonable, is not raised by the complainant.

The complainant contends that the charge made by the defendant company must be one charge, so far as the switching movement is concerned, and that it cannot make a charge for switching the car and at the same time, and as a part of the same movement, make an additional charge for car rental or the use of the car.

Upon behalf of the defendant, it is claimed that in addition to the switching charge of three dollars, it has the legal right to make an additional charge of two dollars for rental charge for the use of the car during such switching movement.

Our law in the sections above quoted not only defines a common carrier and a railroad, but the twenty-third section thereof defines transportation in the following language:

"The term 'transportation' shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, expressed or implied, for the use thereof, and all service in connection with the receipt, delivery and transfer in transit, refrigeration or icing, storage and handling of property transported."

The business of a common carrier, and particularly of a railroad such as the defendant, is the transportation of passengers and property. The only question involved in this proceeding is the transportation of property. Note the twenty-third section of the statute, last referred to, says, "transportation shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage." It therefore follows that the defendant company being a common carrier and a railroad, its principal business is transportation, which it sells to the public. Under the definition, in the twenty-third section, of transportation, it means that as such common carrier in the business of transportation, it shall furnish cars and other vehicles and all instrumentalities and facilities of shipment, etc.; that for the defendant, as a common carrier, to render the service required of it by law in the transportation of property, it is bound to furnish the ordinary facilities of transportation which includes, beyond all question, cars. And as the defendant has a charge of three dollars per car for switching, and before such charge

could be made it would be necessary for the defendant company to furnish to the complainant herein a suitable car to load with its products before such switching would be necessary, and without the furnishing of such car by the defendant company, there could not be made any charge for switching.

There has been considerable written and the briefs of the respective parties herein have a large number of citations in relation to the division of charges for transportation. We note only a few. Judge Grosscup in a recent decision, in passing upon a similar question to the one before us, and in which was involved the question of the division of charges, used the following language:

"The freight demanded covers the entire service of the carrier from depot to depot; it is in law, a compensation, not only for the actual carriage, but also for the facilities for loading and unloading; the service is a single one and the compensation is likewise single. The law will not permit the charge for said single service to be divided. A carrier cannot make up its bill of charges in items, one for loading, one for carriage, one for personal service and one for delivery. The freight is not an aggregate of separate charges, but a single charge. This policy of the law is not because a particular shipper might not deal with the carrier as intelligently in the case of one method as the other, but because the public is not so likely to deal intelligently with a series of items as with a single freight rate. A single charge presents to the shipper at once the whole problem. A series of charges might confuse him and leave uncertain what in the end the aggregate would be."

Judge Grosscup in the same case from which the opinion above is quoted, further held that it was not proper to add a terminal charge to the regular freight charge in the city of Chicago at the Union Stock Yards, from the facts before him finding that it was one and the same movement and that the shipper was entitled for the one rate paid, to have his property delivered at the Union Stock Yards.

In a later case, the finding of fact referred to in the opinion above, that the haul was one continuous haul and that the charge made to the shipper entitled him to have the car and stock delivered at the Union Stock Yards, was reversed, and the court in passing upon the question, says:

"In 1865 the Union Stock Yards were organized; a large area of land purchased and separate tracks laid by the Stock Yards Company connecting with practically all the railroads running into Chicago. From this time the demand for separate terminal facilities at each of these railways seems to have ceased, and all cattle were consigned for delivery at the Stock Yards, not for the purpose of being claimed there by the consignee, but for the purpose of finding a market for them. Here all the cattle consigned to Chicago were deposited for slaughter or for further shipment, and great slaughtering houses have been erected in the vicinity of the yards for the disposition of the cattle. Providing a market for cattle is certainly no part of the business of the railway company, and I think therefore any extra expense occasioned from the

time the cars containing the cattle leave the tracks of the company, and until they arrive at the Stock Yards and the empty cars are returned, the company is entitled to make an additional terminal charge, equivalent to the expense occasioned to it by providing these extra facilities."

In 186th U. S., the court in passing upon this same case, says:

"As the right of the defendant carriers to divide their rates and thus to make a distinct charge from the point of shipment to Chicago and a separate terminal charge for delivery to the Stock Yards, a point beyond the lines of the respective carriers, was conceded by the commission and was upheld by the Circuit Court of Appeals, no contention on this subject arises."

A careful examination of these cases will show that the general statement quoted from the opinion of Judge Grosscup as to the division of charges, has not been reversed, the higher court only holding that a terminal charge might be made by a separate company. This holding in no way conflicts with that part of Judge Grosscup's opinion heretofore quoted:

Beale in his work on "Railroad Rate Regulation," says:

"The entire service of the carrier in connection with a single shipment being conceived of as a unit, it should follow that only one charge may be made covering the entire unit of service."

In Barnes on Interstate Transportation, we find the following:

"It is a carrier's duty to equip its road with instrumentalities of carriage suitable for the traffic it undertakes to carry, and to furnish them alike to all who have occasion for their use, and its duty to furnish equipment cannot be transferred to nor required of shippers."

From the above facts the commission holds that the defendant railroad, being a common carrier, holding itself out to the public as such, and its business being that of furnishing transportation to the public, and that in order to furnish such transportation, it is necessary for it to have suitable instrumentalities and facilities, which would include proper and suitable cars in order to do the work required of it as such common carrier. That being true, and application being made to it as such common carrier for cars, it was its duty to furnish such car or cars to the person requiring the same, and which such car or cars were loaded, to switch the same to the destination as billed by the shipper, for which transportation the defendant railroad would have a right to make a reasonable switching charge, but it being the duty of such common carrier, in order to properly conduct its business, to furnish a car, a charge for car rental is unauthorized under the law.

The argument presented by the defendant road, that its switching charge is insufficient to pay it for the service rendered, even if it were true, would be no defense in this case. If the charge for switching, as stated, is not remunerative to the carrier, it should make such a charge as would be remunerative, and that charge would be allowed and sustained by this commission, is reasonable. It is only fair to every shipper, when he makes a request of the carrier to furnish transporta-

tion, that just so far as it is possible to do so, he should be given a rate in a total sum, and not be required to pay extras or to leave any room for misunderstanding or contention.

It is therefore ordered, adjudged and decreed by the commission that the said defendant railroad shall from this date, desist from charging, demanding, collecting or receiving any car rental in addition to their regular published tariff rate for switching.

By order of the commission this 18th day of January, 1912, dated at Springfield, Ill.

O. F. BERRY, *Chairman.*

RAILROAD AND WAREHOUSE COMMISSION

ON RELATION OF

CITIZENS OF FLORA

V.

UNITED STATES EXPRESS COMPANY.

Complaint of refusal to deliver or collect express matter in the city of Flora, within the corporate limits, filed July 19, 1911.

Appearances—For the complainant, R. S. Jones and B. D. Monroe, attorneys; for the defendant, Frank H. Platt, by B. P. Kerfoot, attorney.

Case heard Jan. 2, 1912.

Findings and order of commission entered May 2, 1912, as follows:

This is an application made by the citizens of Flora for an order fixing the territory or district within which the respondent express company shall hereafter deliver all merchandise, property, parcels, packages, money and other commodities transported by them to the consignees.

Section 9 of the Act defining and regulating express companies and carriers within the State of Illinois, and placing them under the jurisdiction and control of the Illinois Railroad and Warehouse Commission, reads as follows:

“The Railroad and Warehouse Commission may, upon complaint or its own initiative, after notice to the express companies or carriers by express affected, fix and determine the territory in any city or village in this State having a population of 2,500 or more inhabitants according to the last preceding United States census, within which territory such express companies and carriers by express shall thereafter deliver all merchandise, property, parcels, packages, money and other commodities and things transported by them to all consignees within such territory at the place of address as directed on the package, parcel, commodity or thing transported, and thereafter all such express companies and carriers by express shall deliver all merchandise, property,

parcels, packages, money and other commodities and things transported by them, and each of them, to all consignees within such territory, at the place of address as directed on the package, parcel, commodity or thing transported. Any such express company or carrier by express, or any officer, representative, servant, agent, lessee, trustee or receiver of such express company or carrier by express, who knowingly violates any of the provisions of this section, shall be fined in any sum not more than \$100.00, to be recovered in an action of debt in the name of the People of the State of Illinois."

The record shows that the city of Flora is located in Clay county, Ill., at the intersection of the Beardstown & Shawneetown Division of the Baltimore & Ohio Southwestern Railroad Company with the main line of that road, extending through St. Louis, Mo., to Baltimore, Md., and New York, N. Y.

That the respondent express company is the only express company doing business in the city of Flora, being the express company doing business on and with the Baltimore & Ohio Southwestern Railway Company at this point.

The record further shows that the city of Flora has a population, according to the last preceding census, of more than 2,500 people.

The record further shows that the city of Salem, within a few miles of the city of Flora, with a less population than Flora, where there are two express companies doing business, they maintain free delivery. That in the city of Fairfield, with a population less than Flora, with two express companies, they maintain free delivery. That at Altamont, with a population of but little over half that of Flora, with three express companies, they maintain free delivery. That the village of Kinmundy, with a population of only 600 people, has two express companies with free delivery.

These facts, while not necessarily material in the consideration or disposition of this case, may properly be considered as showing what express companies are doing under similar and much less favorable circumstances.

The respondent company in its brief and argument contends that the commission has no jurisdiction to enter an order in this proceeding. The commission holds that under the law it has such jurisdiction and power.

It is also contended that the commission has no power to enter an order that would confiscate the property of the express company, or prevent it from doing interstate business by placing unnecessary or improper burdens thereon.

The commission does not claim that it would have any power or authority to place such a burden upon any common carrier, as to prevent it from transacting business, or such a burden as would, in the language of defendant's counsel, "confiscate the property of the express company;" neither would the commission contend that the Act above referred to required the commission to grant an order upon petition made by any citizens, unless the facts justified such order to be made after a hearing.

The commission holds that when an application is made for free express delivery and to fix a territory therefor, that upon a hearing such testimony should be introduced as would satisfy the commission that the situation at that particular place warranted a free delivery system. The commission in determining applications of this kind should and does take into consideration various elements, such as convenience to the public, the duty of the common carrier to the public, the relative quantity of traffic involved, the relative cost of the service rendered and whether or not the same would be profitable or unprofitable to the company.

The respondent company sought in the testimony to show that the streets of the city of Flora were in such condition at times as to prevent delivery being made, and therefore no order directing delivery at any time should be made. While there is much truth in the statements as to the condition of the streets in the cities of Illinois at certain times of the year, yet if that were to be considered as a reason for the non-delivery by express companies, most Illinois towns would be barred at certain seasons of the year, and the same argument might easily be applied against rural delivery of the mail, but the law does not require an impossibility at any time and would not require an impossibility in delivery by express companies any more than the government requires an impossibility in the delivery of its mail, and the question recurs upon the reasonableness of delivery under reasonable circumstances, all of the elements mentioned herein being considered.

The record in this case shows that the gross receipts of the express company at Flora for the year ending Nov. 1, 1911, were \$15,418.90; counsel for defendant spends considerable time in attempting to show that the necessary expense and charges to be deducted from this sum are of such an amount as to leave an insufficient sum as net profits to justify free delivery in the city of Flora.

With this contention of counsel for respondent company, the commission, after careful consideration and examination, cannot agree. The commission therefore holds that the respondent company should make free delivery within the territory hereinafter described. The application is for free delivery within the corporate limits of the city of Flora; from a careful examination of the plat furnished the commission and the record, we find that from the railroad station or express office, it is something like a mile in different directions to the corporate limits of the city of Flora.

The record further shows that much of this is either residence or unoccupied territory, and, in the ordinary course of business, comparatively few express packages are sent to residences, the business being almost entirely confined to the business district of the city.

The commission finds that the business interests of Flora are entitled to a free delivery service within the following territory.

Beginning at the depot of the Baltimore & Ohio Southwestern Railroad Company at said express office, thence south along said railroad to Maple street, thence east on Maple street to Sycamore street, thence north on Sycamore street to Seventh street, thence west on Seventh street.

to the said railroad track to Church street, thence west along Church street to Seminary street, thence south on Seminary street to the Vincennes & St. Louis road, thence east on said Vincennes & St. Louis road to the State road; thence south on said State road to Maple street, thence east on Maple street to the railroad.

It is therefore ordered, adjudged and decreed that the said respondent, United States Express Company, shall, after June 1, 1912, deliver all merchandise, property, parcels, packages, money and other commodities and things transported by them to all consignees within the territory hereinabove described, at the place of address, as directed on the package, parcel, commodity or thing transported.

By order of the commission this 2d day of May, 1912, dated at Springfield, Ill.

O. F. BERRY, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

RAILROAD AND WAREHOUSE COMMISSION

ON RELATION OF

ATWOOD-DAVIS SAND COMPANY

V.

CHICAGO & NORTHWESTERN RAILWAY CO.

Complaint of unjust discrimination by excluding complaint from shipping zone of Fox River District, and charged higher rate, filed March 22, 1912.

Appearances—For the complainant, E. H. Brewster, Attorney, Dixon, and D. W. Baxter, Attorney, Rochelle, Ill.; for the defendant, C. C. Wright, General Solicitor.

Case heard May 9, 1912.

Findings and order of the commission entered July 16, 1912, as follows:

The complainant, the Atwood-Davis Sand Company, a number of years ago, after a number of conferences with the officials of the Chicago & Northwestern Railway Company, located a plant on their line about ninety miles from Chicago between Roscoe and South Beloit; the product of this plant is washed sand and gravel, the dirt being taken out of the sand and gravel by water, and by a system of screens the sand and gravel being graded.

The record shows the plant was built with a view of disposing of its products on the Chicago market, and without such market it would probably be unable to operate, there being but very few plants of this character in the territory within 100 miles of the city of Chicago and the product being very largely used in the city of Chicago.

Its capacity is about forty cars per day during the proper season, or approximately two train loads; the season for work is from the opening spring time until cold weather sets in in the fall.

The other plants of a similar character and producing the same or substantially the same product along the line of the Chicago & Northwestern Railway are at Cary, Crystal Lake, Algonquin, Elgin and Carpentersville; these plants are located from thirty-eight to fifty-five miles from Chicago.

When this plant was located the freight rates on the product were fixed at one-quarter of a cent differential over the plants mentioned above, and they were placed in the zone or group, so far as freight rates were concerned, where the distance varied from thirty-eight to fifty-five miles. At the time the differential of one-quarter cent was placed, it was more than offset by the absorption of switching in Chicago when the material went off the line, and hence made no difference between the respective producers and sellers of this product, so far as freight rates were concerned.

Recently the railroad company has declined to absorb switching and the complainant does not get the benefit of it as heretofore, the result of which is to make the one-quarter cent differential a very much more important factor than heretofore, and it is contended by the complainant that the changes made by the railroad company in freight rates and their refusal to absorb Chicago switching is detrimental to their interests and is a discrimination against the complainant and in favor of the other industries producing the same product.

The complainant insists that all shippers or producers of a like product to a like market within a reasonable distance, should have like transportation, and insists that it is the custom and practice of the defendant road, as well as other railroad companies to form certain groups or zones covering certain territory, wherein the producer of the same material would get the same shipping rates for the same market, and that the defendant road has voluntarily made such zones for many kinds of products and for the benefit of many industries of a similar character shipping to the same market, and that the other plants herein referred to are covered by what is known as the Fox River shipping group or zone, although they vary in distance from thirty-eight to fifty-five miles, and the complainant insists that such Fox River group or zone should be enlarged to cover the plant of complainant; and it is further contended that because this railroad company has extended zones to other industries producing like products at a much longer distance than it is to the sand and gravel industry and product, that it thereby discriminates against that product and against that industry, and prays the commission to either fix the rate the same as the industries producing the same product in the Fox River zone is fixed, or enlarge the Fox River zone so that it may cover the territory where the complainant's industry is located and product produced.

It is insisted by the defendant road that the rate fixed for transportation of the several products of the several plants is a reasonable one, and that because of the difference in the distance between the complain-

ant's plant and the other plants, the complainant should pay a greater rate; that because the rate is reasonable, the commission should not make any change in the rate; the defendant road further denies the power of the commission to establish zone rates.

It is further contended by the defendant road that the complaint does not state that the rates charged are in and of themselves unreasonable, and therefore the commission has no power or authority to in any wise interfere or pass upon or enter an order in relation to the matter in controversy.

An examination of the complaint will show that it charges that the defendant road unjustly discriminates against it by excluding the plant and product of the complainant from the sand and gravel shipping zone known as the Fox River district, and also by charging a higher shipping rate than is charged the shippers located in said district.

The question presented by this record is a very important, as well as an interesting one. While it is denied by the defendant road that the commission has any power to fix a zone for the equalization of rates from the same industries for the same products for a greater or shorter distance, it is also admitted that not only the defendant road, but many other of the roads have voluntarily and for the purpose of equalizing rates and placing upon an equality certain industries and certain products, although at various distances from the central market, created such zones, and that the defendant is now operating its road in the said zone for various products.

Without determining at this time either the legality or the power of the railroads thus to fix zones or the power of the commission to fix such zones, the commission deems it sufficient for it to accept for the purpose of this case, the voluntary act of the defendant in fixing zones for shipment of various products for various distances at the same rate, and the defendant having done so of its own volition, the question is whether or not it can make a zone putting certain products upon the same basis or under the same rate for from twenty to one hundred miles, and refuse to put other products in a zone for a similar distance, each of said products being destined to the same central market, and over the same common carrier; not only the defendant road, but many other roads have for years and are now operating zones upon the theory that within a reasonable distance from the same central market producers of the same material, depending upon the same market, should have the same freight rate, and it would appear from the number of zones thus created, that the railroads have recognized the justice of an arrangement of this kind and made groups of various distances under a blanket rate to the central market, and have gone so far in some instances that it might be said they had made them regardless of the length of the haul.

Upon examination of a number of the groups or zones cited from the record, being taken from the tariffs of the defendant road, they become very interesting and important:

"WASHED SAND AND GRAVEL ZONE, TAKING SAME RATE TO CHICAGO (See (A), page 6, Exhibit 'A': complainant's plant out). Haul 38 to 55 miles." Average haul 46 $1\frac{1}{5}$ miles.

If this zone was extended to plant of complainant, as complainant desires, it would be as follows:

Haul 38 to 90 miles. Average haul $53\frac{1}{2}$ miles. Increase of average haul $7\frac{3}{10}$ miles. Average haul 40 per cent greater than short haul.

"SOFT COAL ZONE, TAKING SAME RATE TO CHICAGO (See (A), p. 1, Exhibit 'A.') Haul 33 to 109 miles." Average haul 59 miles. Average haul 110 per cent greater than short haul.

ICE ZONE TAKING SAME RATE TO CHICAGO (See (A), p. 2, Exhibit 'A.') Haul 17 to 91 miles." Average haul 54 miles.

"LIME, ETC., ZONE, TAKING SAME RATE TO CHICAGO (See (B), p. 2, Exhibit 'A.') Haul 85 to 185 miles." Average haul 142 miles. Average haul 67 per cent greater than short haul.

"LUMBER ZONE, TAKING SAME RATE TO CHICAGO (See (A), p. 3, Exhibit 'A.') Haul 32 to 117 miles."

Cary is in this group; also Beloit.

"COMMODITY RATES SAME TO CHICAGO (See (B), pp. 3 and 4., Exhibit 'A.') Haul 12 to 90 miles."

"GROUP RATES ON COMMODITIES TO CHICAGO (See (A), pp. 4, 5 and 6, Exhibit 'A.') Haul 20 to 140 miles."

Complainant's plant and pit, and also many of Fox river plants included in these groups.

"SAND ZONE ESTABLISHED BY ROADS OTHER THAN DEFENDANT, TAKING SAME RATE TO CHICAGO (See (B), pp. 6 and 7, Exhibit 'A.') Haul 23 to 92 miles." Average haul 43 miles.

"PAPER GROUP OR ZONE, comprising all points where PAPER MILLS ARE LOCATED, TAKING SAME RATE TO CHICAGO GROUP POINTS. (See (B), p. 8, Exhibit 'A.') Haul 177 to 275 miles." Average haul 222 miles.

Above illustrations are sufficient to demonstrate the statement above made. Many more could be given from the tariffs showing even greater differences in zones than some of the ones mentioned. Examination of one tariff shows a rate on lumber to Chicago from Wayne, Ill., 35 miles, nearest point, and the same rate from Freeport to Chicago, 121 miles; also from Roscoe, Ill., 85 miles, and from Evansville, Wis., 107 miles, and in these zones is located the complainant's industry. This shipping zone extends from Barrington, Ill., to Freeport, Ill., with a variation of 32 to 121 miles, and includes the industry of complainant, also the points of the Fox River district.

An examination of the tariffs shows conclusively that practically every kind of product and commodity is handled in and around Chicago in zones greater than the Fox River zone. No reason has been given either in the testimony or in the arguments, why the sand and gravel zone has been limited to fifty-five miles nor why the railroad company refused to extend it to ninety miles for the industry of the complainant, producing the same product to the same market, while their own tariffs show zones carrying practically all kinds of raw materials, as well as the finished article, at the same rate where the differences vary more than they would if the Fox River zone was extended to the industry of the complainant.

In Interstate Commerce Commission Opinion No. 1830, Case No. 4074, in discussing a similar principle, the commission says:

"It frequently happens that group rates are the most just, and promote, in the highest degree, healthy competition. Whether a coal mine can sell in a particular market usually, depends upon its rate of freight, and it is the almost universal custom to create groups which embrace certain mines, giving to all these mines the same rate, even though the distance may be different."

It is evident from the record in this case that the producers or shippers of almost every kind and character of product within a radius of 100 miles of Chicago, are within a zone which makes a rate upon such shipments equal, except on the product of sand and gravel, which seems to be limited in a zone of fifty-five miles.

Assuming, for the purpose of this opinion only, that the defendant road, for the purposes of economical and beneficial transportation, created the zones or groups shown in the record in this case, and which appear in their respective tariffs, and for the further purposes of promoting and encouraging industry and genuine competition, by putting the rate for similar products in a large territory upon the same basis to a central market, it therefore naturally follows and is equally true that the defendant road in creating such zones and groups, must deal alike with all industries and products and not discriminate against any one industry or product.

We are not at this time discussing the question of long and short haul, or the statute in relation thereto, or the question of making a rate for a long or short haul by this commission, but we are assuming that what the defendant road has done voluntarily was proper for it to do, and that such action was in the interests of the public as well as itself, and for the purposes of this hearing the defendant road is bound by its own action in relation thereto.

The commission finds from the record in this case that the defendant road has made a large number of zones or groups varying in distance from thirty to more than 100 miles, and that it has fixed the same rate in each of said zones or groups for similar products therein.

The commission therefore holds that the defendant road, having made such zones or groups in said territory and having zones and groups for various products and industries covering the same territory of the petitioner's industry, that to refuse to place the petitioner in said zone or group, and thus place said petitioner upon an equal basis with other products and industries of the same character, is discrimination against the petitioner, its industry and product, when compared with other products and industries within the same radius from the same central market.

It is contended by the defendant, and as authority cites the decision of this commission in the *Wedron White Sand Company v. C., B. & Q. R. R.*, page 125 of their annual report of 1910, in which decision the commission says:

"All schedules of freight rates made by this commission are made on a mileage basis, and the commission has uniformly held that they are not authorized under the law to make the same rate of tariff for different mileages."

The commission holds that the decision referred to is not in point in this case for the following reason:

In that case the question before the commission was the fixing of a rate.

In this case the commission is not asked to make a rate, and is not assuming to make any freight rate or any schedule of rates or change any rate now in effect.

It also appears from the record that the cars of the defendant road that are used by the complainant are cars that have been shipped from Chicago to the north and northwest loaded, and are on their return to Chicago, and as a rule are stopped on this return trip and loaded at the industry of the complainant. While this is not all-important, it is a circumstance to be taken into consideration in determining the actual cost of transportation.

The record also shows that the equipment furnished the industries within the present Fox River zone is sent out directly from Chicago for the use of the industries in that zone, and it is fair to presume that the expense of furnishing cars to the complainant herein is not more, and is possibly less, to the defendant road, than to furnish cars to the industries within the Fox River zone.

It also appears from the record that the complainant or complainant's immediate successors were encouraged by the defendant road to locate said industry upon said road and at the point where located, and while no specific agreement appears in the record, there are many circumstances that point to the fact that the complainant expected that the rate from his industry to the central market, which was Chicago, would be the same as from any other industry in that territory.

It appears from the record in this case that the defendant company has created zones or groups of sufficient size and are hauling the products of various kinds, a greater distance at the same rate in said zones or groups, than would be necessary for them to do, were they to extend the zone or group and include the petitioner's industry and product as petitioned for herein at the same rate, and said defendant company having so created said zones or groups for other products and industries covering the territory in which the industry and product of the petitioner is located.

The commission holds that if said defendant road desires to maintain such groups or zones and fix the same rate in said groups or zones, that it should extend the zone known as the Fox River district to include the industry and product of the petitioner herein, and that a failure to do so is discrimination, in that other industries and products of the same distance from the central market have rates and advantages to said central market which are denied to this petitioner;

It is therefore ordered, adjudged and decreed by this commission that the said defendant road shall extend said Fox River district to include the industry and product of the petitioner at whatever rate may be now or hereafter fixed by the defendant road for such Fox River district zone.

By order of the commission this 16th day of July, 1912, dated at Springfield, Ill.

O. F. BERRY, *Chairman*;
B. A. ECKHART, *Commissioner*;
J. A. WILLOUGHBY, *Commissioner*.

RAILROAD AND WAREHOUSE COMMISSION

ON RELATION OF

M. M. CLARK, HAVANA, ILL.

V.

CHICAGO, PEORIA & ST. LOUIS RAILWAY CO. OF ILLINOIS.

Complaint of refusal to switch cars of coal from Illinois Central R. R. to sheds of complainant, located on C., P. & St. L. Ry. track at Havana, Ill., filed Feb. 27, 1912.

Appearances—For the complainant, H. W. Masters, Attorney, Springfield, Ill.; for the defendant, Wilson, Warren & Child, Attorneys.

Case heard May 7, 1912.

Findings and order of the commission entered July 16, 1912, as follows:

The complaint filed in this case charges the defendant company with having refused to switch cars from the Illinois Central Railroad (with which it is connected by a switch) to the sheds of complainant located on a switch track of the defendant road, and that as a result of such refusal, the defendant road has discriminated against the complainant.

The complainant also charges that the defendant road has been switching and is now doing switching for the Havana Metal Wheel Co. and the Crescent Forge & Shovel Co. from the same railroad and on to the same track.

The defendant road admits the refusal to switch such cars upon the ground that the tracks to which they are desired to be switched from the Illinois Central Railroad are team tracks, and that they are not required to accept and switch cars from another road on to their team tracks. The main question presented therefore is whether or not the complainant's sheds are located upon what is known as an industrial track or a team track.

The record shows that about seventeen years ago one of the tracks in question was built by the defendant road for the purpose of accommodating at that time the Havana Electric Company, which side track connects with the main sidetrack of the defendant company. The track referred to as a spur track as well as the main switch track, are claimed by the defendant to be team tracks, and for that reason they cannot be required for the regular switching fee to switch cars from the Illinois Central Railroad thereto.

It appears from the record that the defendant road has been switching cars for the Havana Manufacturing Co. and the Metal Wheel Company at the rate of ten cents per ton, which cars came from the Illinois Central Railroad, and it also appears that said defendant is the owner of the tracks over which this switching was done, and that the complainant's bins were located upon said tracks. It is a rule of law well recognized that a common carrier must treat all shippers alike, and it appearing that such switching was done for other persons as herein stated, it follows that switching of the same character must be done at the same price for the complainant.

In the defendant's contention as to team tracks, the commission holds that the evidence does not justify the defendant road in its contention that the spur track, built by them for the Havana Electric Company, is a team track, but the evidence shows clearly that it is an industrial track or private track, and upon this track is located one of the bins of the complainant, and this is the track to which the defendant road refused to switch cars from the Illinois Central Railroad.

The commission believes that the record does justify the contention of the defendant road that the main switch is its team track, therefore defendant could not be required to switch cars from the Illinois Central Railroad to the bin of the complainant located upon said team track.

The defendant road could not at the time it connected its railroad with the Illinois Central Railroad, have been compelled to do so, but having done so, and having by its own action created the facilities for the handling of such business, and since the delivery asked to be made was over and upon an industrial track or track used and regarded as a private switch, the defendant road has no right to charge any sum in excess of what it is permitted to charge for switching from a private switch, and no greater sum than it charged others for the same service;

The commission therefore holds that the track known as the spur track is an industrial track; that the main switch referred to in the testimony is a team track;

The commission further holds that the defendant road in refusing to deliver cars from the Illinois Central Railroad to said spur track for the complainant at his sheds thereon, was not justified in such refusal, but should have switched said cars as requested by the complainant;

It is therefore ordered, adjudged and decreed by the commission that the said defendant road hereafter comply with the request of the com-

plainant to switch cars from the Illinois Central Railroad to said spur track, and to perform such switching for the regular industrial switching charge.

By order of the commission, this 16th day of July, 1912, dated at Springfield, Ill.

O. F. BERRY, *Chairman*;
B. A. ECKHART, *Commissioner*;
J. A. WILLOUGHBY, *Commissioner*.

RAILROAD AND WAREHOUSE COMMISSION

ON RELATION OF

HYGIENIC ICE COMPANY, CHICAGO, ILL.,

V.

ELGIN, JOLIET & EASTERN RAILWAY CO.,

CHICAGO, BURLINGTON & QUINCY RAILROAD CO.

Complaint of rate on ice from Plainfield to Chicago, Ill., filed June 25, 1912.

Appearances—For the complainant, H. J. Aaron, Attorney, Chicago, Ill.; for the defendant, Elgin, Joliet & Eastern Ry. Co., Knapp & Campbell, and for the defendant, Chicago, Burlington & Quincy R. R. Co., J. A. Connell, District Attorney.

Case heard July 5, 1912.

Findings and order of commission entered July 23, 1912, as follows:

The complainant alleges that it purchased from the Plainfield Ice Company in February, 1912, 10,000 tons of ice for shipment to Chicago to an industry located on the Chicago, Burlington & Quincy Railroad; that Plainfield is on the line of the Elgin, Joliet & Eastern Railway, between the city of Joliet and the city of Chicago; that said Elgin, Joliet & Eastern Railway Company has had in effect for many years a rate of 50 cents per ton on ice from Joliet to Chicago in connection with the Chicago & Northwestern Railway Company and the Chicago, Milwaukee & St. Paul Railway Company; that the Chicago, Burlington & Quincy Railroad Company also published a rate, effective March 5, 1912, of 50 cents on ice from Plainfield to Chicago, in conjunction with the Elgin, Joliet & Eastern Railway Company.

Complainant alleges that relying upon said published tariff and rate, it made this contract on the basis of a rate of 50 cents per ton.

Complaint alleges that shipments from Plainfield to Chicago move via the Elgin, Joliet & Eastern Railway to Aurora, Ill., thence via the Chicago, Burlington & Quincy Railroad to Chicago.

Complaint alleges that after making said contract, the Elgin, Joliet & Eastern Railway Company cancelled this 50-cent rate and refused to continue said rate of 50 cents per ton, and that the Chicago, Burlington & Quincy Railroad Company for that reason was compelled to withdraw the rate of 50 cents per ton on June 1, 1912, and both of said carriers named a rate of 60 cents per ton via same route.

The complainant asks for suspension of tariff showing 60-cent rate, and that said carriers be required to carry ice referred to in such contract at the 50-cent rate as published at the time of making said contract.

After a full hearing of the testimony and arguments of counsel, the commission ruled that the respective roads having published rate of 50 cents per ton, and the complainant having entered into a contract for the delivery of 10,000 tons of ice upon that rate, that the defendant roads should carry this ice at said 50-cent rate, or such portion of it as may be shipped over said roads prior to Nov. 1, 1912, being the time of the expiration of said contract.

The commission held that when a common carrier publishes a tariff for the use of the public, and contracts are made based on rates in said tariff, that said common carrier should be required to keep such rate for a reasonable length of time, where it appears that parties have made, in good faith, contracts based thereon, and until reasonable notice is given the public of the change of such rate.

After such ruling had been made by the commission, the respective roads stated to the commission that if the 60-cent rate now published was permitted to stand, they would be willing to comply with the ruling of the commission, and that if the complainant would pay the regular 60-cent rate, the defendant roads would immediately, upon the completion of the contract and not later than Nov. 1, 1912, petition this commission for leave to refund the 10 cents per ton additional, which was satisfactory and agreed to by the respective parties.

Therefore, by agreement, it is ordered by the commission that said complainant pay to the defendant roads the 60 cents per ton for the shipment of 10,000 tons of ice, or such portion as shall be shipped up to Nov. 1, 1912, and that immediately thereafter the respective roads, or one of them, shall make application to this commission for permission to refund the difference between 50-cent and 60-cent rate per ton on account of ice shipped.

This cause is hereby continued for further order.

By order of the commission this 23d day of July, 1912, dated at Springfield, Ill.

O. F. BERRY, *Chairman*;
B. A. ECKHART, *Commissioner*;
J. A. WILLOUGHBY, *Commissioner*.

MISCELLANEOUS.

J. C. SHIRLEY

V.

CHICAGO & NORTHWESTERN RAILWAY CO.

BY PHILLIPS, *Chairman.*

Shirley purchased of the Chicago & Northwestern Railway Co. a "monthly commutation ticket," good for sixty rides in the month of May between Chicago and Lakeside, a distance of eighteen miles. The ticket cost \$6.50, or at the rate of 10 5-6 cents per ride. Fifty-five of the sixty coupons were used in the lifetime of the ticket. Five remained unused; and these unused coupons were presented by Shirley to the company for redemption under the Act of 1875. Shirley claims that 55 cents should be refunded to him as the redemption value of the ticket. His theory is that the five coupons are redeemable at their cost price. The company refused to redeem the five unused coupons at the rate stated, or any other rate, claiming that they were without any redemption value under the statute.

The statute relied upon is the Act of 1875, section 5 of which provides:

"That it shall be the duty of the owner or owners of railroad or steamboats, by their agents or managers, to provide for the redemption of the whole or any parts or coupons of any ticket or tickets as they may have sold, as the purchaser for any reason has not used, and does not desire to use, at a rate which shall be equal to the difference between the price paid for the whole ticket and the cost of a ticket between the points for which the proportion of said ticket was actually used," etc.

Under this ungrammatical and clumsy provision, was anything due Mr. Shirley from the railway company upon the remaining five coupons of his sixty-ride ticket?

This coupon ticket was by its terms not transferable. It could be used only by Shirley himself, whose name was written upon it. The courts hold the condition which prohibits the transfer of commutation tickets to be reasonable and therefore legally enforceable. Shirley's ticket could then have no general market value, because a third party could use it only by perpetrating a fraud upon the company. If the ticket had any value, that value is measured solely by the statutory liability of the issuing company under the section above quoted.

If each coupon of a commutation ticket is redeemable at its cost price, as contended, then it is evident that any passenger can compel the company to carry him at the lowest commutation rate, whether he rides much or little. This is to say, if the regular fare between two stations seven miles apart be twenty cents, and the company puts on sale ten-ride commutation tickets between these stations at one dollar, or at the rate of ten cents per ride, the reduction being made in consideration of ten rides being taken at one purchase, then no patron of the company need pay more than ten cents per ride between these points; because he can purchase a ten-ride ticket, use one coupon for a single ride, present the remaining nine coupons to the ticket agent at the end of the journey for redemption, and receive back ninety cents.

This merely illustrates one of the consequences of admitting the contention of complainant. Such a consideration, however, cannot control the present decision. We are to determine what the section of the statute above quoted means, and its meaning must be found in the language used. It is not a question as to what the law ought to provide, but what it does in fact provide.

The statute says the company shall "provide for the redemption of the whole or any parts or coupons of any ticket," etc. This redemption was to be made, according to the language of the statute, "at a rate which shall be equal to the difference between the price paid for the whole ticket and the cost of a ticket between the points for which the proportion of said ticket was actually used."

Had the law-makers meant that coupons should be redeemed at their cost price they could have said so in a word. They did not say so, but said something else, namely, that the difference between the price paid for the whole ticket and what it would have cost the passenger to have bought a ticket for the riding actually done on the ticket shall be the redemption value. The language of the section is a little awkward and a trifle muddy, but the above is its clear meaning.

The question then is, could Mr. Shirley have ridden fifty-five times between Chicago and Lakeside for less than \$6.50, the cost of the ticket, either by paying regular fares, or upon any other style of commutation ticket issued by the company? If he could have done so, then he was entitled, under this statute, to the difference between what it would have cost him to ride fifty-five times and the \$6.50 he paid. For instance, if the company at the time this ticket was purchased would have sold Shirley fifty-five rides for \$5.95, then clearly Shirley has, under the company's own practice, ridden but the worth of \$5.95, and is entitled under the language of the above section to the fifty-five cents he claims, but not otherwise.

It does not appear, however, that the difference between the price paid and "the cost of a ticket between the points for which the proportion of said ticket was actually used," would in this case be anything.

We therefore hold that the ticket has no redeemable value under the statute. The complaint will be dismissed.

Adopted Jan. 17, 1893.

O. L. BRINING, OF LE ROY, ILL.

V.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY

AND

THE ILLINOIS CENTRAL RAILROAD COMPANY (CITED BY THE COMMISSION AS A PARTY IN INTEREST).

Appearances—O. L. Brining, representing himself; Moss, Hudson, Jamieson & Keepers, representing the Illinois Central; C. V. Jaquith, representing the Cleveland, Cincinnati, Chicago & St. Louis.

OPINION BY LINDLY, *Chairman*.

This is a complaint filed by O. L. Brining, of Le Roy, Ill., against the two above named railroad companies, charging that the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, on the 10th day of October, 1897, took up a portion of a certain Y track connecting the Illinois Central Railroad and the said Cleveland, Cincinnati, Chicago & St. Louis Railway at the point above mentioned.

It appears from the proof in this case that several years ago, when this portion of the Illinois Central Railroad Company was owned by a different corporation, and was a narrow gauge road, this connection was built.

The statute permits railroads which cross or intersect each other to enter into an agreement to make proper connections between each other, and, on failure to agree, proceedings could be had at law compelling such connection to be made. (Hurd, 1897, § 20, ¶ 6, p. 1240.)

The statute further provides in the same connection, that "all railroad companies incorporated or organized, or which may be incorporated or organized, as aforesaid, shall have the right to connect with each other and with the railroads of other states on such terms as shall be mutually agreed upon by the companies interested in such connection." (Hurd, 1898, § 45, p. 1245.)

It will be seen from these two provisions of the statute that this connection was legally made, and was duly authorized under the law. The question here presented is, has either of the above mentioned railroad companies the right to terminate this contract and terminate the connection between the two lines?

It appears from the proof that the complainant's elevator is situated on the right-of-way of the Illinois Central Railroad Company. It is insisted by him that he has a right to use the Y track for the purpose of transferring grain from his elevator on the Illinois Central tracks to the line of the Cleveland, Cincinnati, Chicago & St. Louis tracks at that point for the purpose of shipment over the said last mentioned company's road. That this Y connection is a matter of considerable con-

venience to him cannot be questioned, but when the elevator was built on the line of railroad of the Illinois Central it is to be presumed that he could only rightfully insist upon the facilities afforded him by the railroad upon whose track this elevator is situated. While the removal of this Y connection might inconvenience a shipper whose elevator was upon a different road, yet the same thing could be insisted upon at any other point where a connection is made between two railroad companies by a shipper who desires to avail himself of such connection. To illustrate: If there was no connection between the two roads at Le Roy, but at a point 20 miles distant from Le Roy a connection was made between the said companies, it could as well be insisted that the shipper would have a right to have the connection maintained at said point 20 miles distant. In this view we cannot concur. The Y connection at Le Roy, from the proof, was shown to exist merely by agreement between the two lines. The proof further shows that it has ceased to be used as a transfer track for carload lots from one road to the other for a long time.

This being the case, we are of the opinion that the above mentioned railroad companies have a right to discontinue the connection and use of the Y track. The cost of maintaining this track is a matter of some consideration, and, so long as the railroad companies have ceased to use it for the purpose of transacting business between the two lines, and, in view of the fact that the complainant has ample facilities on the line on which he is situated, we are of the opinion that the removal of the track was not in violation of any law of this State.

Petition denied and complaint dismissed.

Opinion Feb. 8, 1898.

LAKE ERIE AND WESTERN RAILROAD COMPANY

V.

ILLINOIS CENTRAL RAILROAD COMPANY.

Appearances—For petitioner, Thomas H. Perry; for respondent, H. Baker.

OPINION BY LINDLY, *Chairman*.

This was a case brought on petition filed by the Lake Erie & Western Railroad Company representing that they were the owners and operators, jointly, with the Illinois Central Railroad Company of the interlocking plant composed of the tower, interlocking machine, signals, connections, etc., at Paxton. They further represented in their petition that soon after the construction of the interlocking plant, to-wit: in the summer of 1898, the towerman's view of the Lake Erie & Western Railroad Company's eastern bound trains was obstructed by and is now obstructed until the trains of the Lake Erie & Western Railroad, east bound, arrive at a point within derail distance of the crossing by the

remodeling and extending of a warehouse building on a lot corner at the northwest corner of the intersection of said railroad company's right-of-way. The Lake Erie & Western Railroad Company further set forth in their petition that they have been ready and desire to unite with the Illinois Central Railroad Company in a plan and the cost necessary to enable the towerman to observe the Lake Erie & Western Railroad Company's east bound trains at a point at least where they were in view before this obstruction existed; that it is necessary, in order to secure this view, to extend the tower ten feet south, according to plans submitted with the petition; that the total cost of the construction of the addition to the tower is one hundred and forty-five dollars (\$145.00).

The Illinois Central Railroad Company stated that the present location of the interlocking tower was agreed upon when the plant was constructed; that it was not particularly favorable to the Illinois Central Railroad Company for the reason that the view of Illinois Central Railroad Company's trains from the south was shut off by the Illinois Central freight house building, which had been in that location for a great many years; stating further that the location of the tower was decided by the Railroad Commission at the time of its construction; that it was approved by both roads; that it was accepted by both roads; that after it was constructed the Illinois Central Railroad Company, to secure a better view of their track, removed their freight building entirely at their own expense; simply that the towerman might have a view of their line to the south, claiming that they did not ask the Lake Erie & Western road to participate in that expense.

The evidence was heard in this case. The evidence shows that this elevator is constructed upon private land and not upon the right-of-way of the Lake Erie and Western Railroad. The Lake Erie and Western Railroad had no authority to control the building when constructed nor to prohibit the building of the same. Nor does it appear from the evidence that the Lake Erie and Western Railroad Company participated in any way in the construction of this elevator. The claim that the Illinois Central presents, that it became necessary for them to remove their freight depot that the towerman might see the trains from the south, cannot enter materially into the decision in this case, for the reason that the Railroad Commission at that time fixed the position of the tower, and the freight depot in question was upon the right-of-way of the Illinois Central Railroad Company and they had entire control of the depot and could move it as they saw fit, and the Lake Erie and Western Railroad Company could not be asked to participate in the expense of removing an obstruction upon the right-of-way of the Illinois Central Railroad Company which obscured the view of the towerman of no train on their line approaching the crossing.

If, from the evidence, it did appear that this elevator in question was constructed upon the right of way of the Lake Erie and Western Railroad Company, or was constructed at the request or behest of the Lake Erie and Western Railroad Company, or they were part owners of the elevator building itself, owners or part owners of the land upon

which the elevator was constructed, then they would be in the same position that the Illinois Central Railroad Company occupy in regard to the obstructed view caused by the freight depot on the right-of-way of the Illinois Central Railroad Company, and would be required to remove this obstruction at their own cost, and the Illinois Central Railroad Company could not be required to participate in the expense.

In view of these facts, the commission are of the opinion that in the building of the addition to the tower house caused by this obstruction of a building not on the right-of-way of either of the railroads, or not under the control of either one of the railroads, that they should both participate in the same proportion in the expense of this addition to the tower that they did in the original construction of the same.

It is therefore ordered and decreed that an addition be made to the tower house of the interlocking plant at the crossing of the Illinois Central and the Lake Erie and Western Railroads at Paxton according to the specifications in the plan presented by the petitioner, and that each railroad pay the same proportion of the cost of the construction of the addition to the tower house that they paid in the construction of the original plant itself.

Dated at Springfield, Ill., this 26th day of July, A. D. 1899.

PROTECTION OF FROGS, GUARD RAILS, HEELS OF SWITCHES, ETC.

SPRINGFIELD, ILL., Apr. 8, 1903.

At the regular monthly meeting of the Board of Railroad and Warehouse Commissioners of the State of Illinois, held at their office in Springfield, Ill., this 8th day of April, 1903, the matter of the proper protection of all frogs, guard rails and the heels of all switch points by foot guards or blocking, as set forth in their circular letter of Feb. 10, 1903, and the hearing of the case before the board on Feb. 24, 1903, was taken up for final decision.

From the files of the board, as to reports of personal injuries, and from the statements of the construction and operating departments of a large percentage of the railroads of our State, as developed at the hearing, that it is necessary as a measure of protection to the lives or serious injury of persons, more especially of employes in the operating departments of our railroads, that all frogs, guard rails and the heels of all switch points in all switches in this State be protected by foot guards or blocking.

It is therefore ordered by said Board of Railroad and Warehouse Commissioners that under the provisions of "An Act to establish a Board of Railroad and Warehouse Commissioners, and prescribe their powers and duties" (approved Apr. 13, 1871, in force July 1, 1871), section 11½, and after full compliance with all its requirements, and being fully advised, that it is absolutely necessary for the protection of life and from personal injury to persons in this State, that proper foot guards or blocking be provided for all frogs, guard rails and the

heels of all switch points in all switches, and the said Board of Railroad and Warehouse Commissioners by this, its order, do therefore recommend to all corporations, or person or persons owning or operating all railroads in the State of Illinois, that on or before the 1st day of July, 1903, they shall provide suitable foot guards or blocking for all frogs, guard rails and the heels of all switch points in all switches in the State of Illinois.

JAMES S. NEVILLE,
ARTHUR L. FRENCH,
Commissioners.

POORMAN BROTHERS

V.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY.

Petition for installation of track scales at West Union.

This is a petition based upon the Statute of 1877 found in chapter 114, paragraph 119 of the Revised Statutes, 1905, a portion of which paragraph reads as follows:

"At all stations or places from which the shipment of grain by the road of such corporation shall have amounted during the previous year to fifty thousand bushels or more, such corporation shall, when required so to do by the persons who are the shippers of the major part of said fifty thousand bushels of grain erect and keep in good condition for use and the use in weighing grain to be shipped over its road, true and correct scales of proper structure and capacity for the weighing of grain by carload in their cars after the same shall have been loaded."

This is a sufficient part of the paragraph for the purposes of this opinion.

While this statute is an old one, as above indicated, this seems to be the first petition of this kind and the first ruling of the commission on the question involved. The facts in the case are not controverted. It is admitted that fifty thousand bushels and more of grain was shipped from West Union Station during the period required by the statute. Practically the only question raised before the commission by the respondent was that before petitioners were entitled to the relief sought for, they should show that a sufficient amount of grain, namely: Fifty thousand bushels per annum was shipped intrastate, and that shipments interstate could not be counted in determining the amount of grain shipped to entitle the petitioner to relief under the statute. There are a number of reasons that suggest themselves to the commission at once why this contention under the present statute should not prevail, but we deem it unnecessary to at length argue the question at this time. The statute appears to the commission to be plain and subject to but one construction; namely, that when fifty thousand bushels or more of grain are shipped during the previous year from a station on

a road, that upon a proper petition presented to this commission the railroad "shall erect and keep in good condition for use and use in weighing grain to be shipped over its road true and correct scales of proper structure and capacity for the weighing of grain by carload in their cars after the same shall have been loaded," and the fact of the shipments being admitted and with that view of the law the prayer of the petitioner will be granted, and the commission being fully advised in the premises.

It is ordered, adjudged and decreed that the said respondent, the Cleveland, Cincinnati, Chicago & St. Louis Railway Company shall within a reasonable time on or before Aug. 1, 1910, erect for use in weighing grain to be shipped over its road at West Union Station, on said road, true and correct scales of proper structure and capacity for the weighing of grain by the railroad in their cars, after the same shall have been loaded, and shall maintain and continue the same according to the statute as in such case is made and provided.

By order of the commission this 11th day of May, 1910.

ORVILLE F. BERRY, *Chairman*;
B. A. ECKHART, *Commissioner*;
J. A. WILLOUGHBY, *Commissioner*.

D. D. BABER, DUDLEY, ILL.,

v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY.

Petition for installation of track scales at Dudley, Ill.

This is a petition based upon the Statute of 1877, found in chapter 114, paragraph 119, of the Revised Statutes, 1905, a portion of which paragraph reads as follows:

"At all stations or places from which the shipment of grain by the road of such corporation shall have amounted during the previous year to 50,000 bushels or more, such corporation shall, when required so to do by the persons who are the shippers of the major part of said 50,000 bushels of grain, erect and keep in good condition for use, and use in weighing grain to be shipped over its road, true and correct scales of proper structure and capacity for the weighing of grain by carload in their cars after the same shall have been loaded."

This is a sufficient part of the paragraph for the purposes of this opinion.

While this statute is an old one, as above indicated, the facts in the case are not controverted. It is admitted that 50,000 bushels and more of grain were shipped from Dudley Station during the period required by the statute. Practically the only question raised before the commission by the respondent was that before petitioners were entitled to the relief sought for, they should show that a sufficient amount of grain, namely, 50,000 bushels, per annum was shipped intrastate, and that

shipments interstate could not be counted in determining the amount of grain shipped to entitle the petitioner to relief under the statute. There are a number of reasons that suggest themselves to the commission at once why this contention under the present statute should not prevail, but we deem it unnecessary to at length argue the question at this time. The statute appears to the commission to be plain and subject to but one construction, namely, that when 50,000 bushels or more of grain are shipped during the previous year from a station on a road, that upon a proper petition presented to this commission the railroad "shall erect and keep in good condition for use, and use in weighing grain to be shipped over its road, true and correct scales of proper structure and capacity for the weighing of grain by carload in their cars after the same shall have been loaded," and the fact of the shipments being admitted, and with that view of the law, the prayer of the petitioner will be granted, and the commission being fully advised in the premises.

It is ordered, adjudged and decreed that the said respondent, the Cleveland, Cincinnati, Chicago & St. Louis Railway Company, shall, within a reasonable time on or before Feb. 1, 1911, erect for use in weighing grain to be shipped over its road at Dudley Station, on said road, true and correct scales of proper structure and capacity for the weighing of grain by the railroad in their cars, after the same shall have been loaded, and shall maintain and continue the same according to the statute as in such case is made and provided.

By order of the commission this 27th day of December, 1910.

ORVILLE F. BERRY, *Chairman*;
B. A. ECKHART, *Commissioner*;
J. A. WILLOUGHBY, *Commissioner*.

RAILROAD AND WAREHOUSE COMMISSION

ON RELATION OF

WILLIAM E. GOLDEN

V.

CHICAGO & OAK PARK ELEVATED R. R. Co.

The original petition in this case was so general that on motion the petitioner was required to make it more explicit and the amended petition was filed April 11, 1911, and charges as follows:

First—The petition alleges that the defendant road has failed to complete its entire road, as authorized by its charter, in ten years from the date of issue, in violation of the statutes of the State of Illinois.

Second—The petition alleges that the defendant road does not ring a bell or blow a whistle at least eighty rods before reaching a crossing, in violation of the statutes of the State of Illinois.

Third—The petition alleges the defendant road does not furnish an axe, saw, sledge hammer, etc., for each car as required by the statutes of this State.

Fourth—The petition alleges that the defendant road is guilty of discrimination in rates prior to July 1, 1907, and entered into a contract unlawfully with the city of Chicago, town of Cicero, and so discriminated in violation of the law of this State.

Fifth—The petition alleges that the defendant road starts its trains or cars without signalling in the city of Chicago and in the village of Oak Park, in violation of the law.

Sixth—The petition alleges that the defendant's cars are not equipped with automatic couplers, in violation of the laws of this State.

All of these charges are denied by the defendant road. It is also contended by the petitioner that the Railroad and Warehouse Commission has the right, and it is their duty, to direct the Attorney General or the State's attorney of Cook county to proceed against the defendant road for the foregoing violations.

It will be noted that there are only a few of the charges made in the petition herein, that this commission can make any order in relation to, other than to prosecute under the criminal code, if they deemed it proper to do so, or report the case to the Attorney General or State's attorney of Cook county for that purpose. It is manifest from the entire record in this case that there is a great deal of ill-feeling between the respective parties to this proceeding and that the petitioner, William E. Golden, has a grievance against the defendant road, and it is also plain to be seen from the record that the defendant road is not inclined to treat with even proper respect the petitioner, or the people he represents, in relation to this matter. Whatever may be the motive and whatever may be the feeling of the respective parties, this commission has nothing to do with; and while all proceedings of this kind ought to be in the proper spirit and done for the purpose of bettering the service of the community, yet if there are violations of law, the commission cannot overlook that fact because the motive behind the complaint may not be entirely what it should be.

The defendant is an interurban electric road operating largely in the city of Chicago and suburban points.

As to paragraph 1, this commission has no jurisdiction to make an order in relation thereto and the road being substantially completed, as shown by the record, the commission hold there is no such a failure to comply with the conditions of their charter as would justify the commission to direct a suit to be brought to forfeit the charter of the defendant road.

As to paragraph 2, while it may be in the letter of the law, it is not within the spirit of the law, it seems to the commission, to require roads similar to this one to place upon their car a bell, as required of steam roads on their locomotives, or to blow a whistle, as is required of steam roads, at least within eighty rods of the crossing, and hence the commission dismisses this charge as unnecessary to enter any order in relation to it at this time.

As to paragraph 3, the record shows that the defendant company does not furnish for each of its cars an axe, saw, sledge hammer, etc. Section 34 of the Act of 1874 provides that every railroad corporation shall

furnish each car used for transportation of passengers with one woodman's axe, one hand-saw, one sledge hammer and two leather buckets, such articles to be kept in good repair; ready for instant use and in some convenient place in such car; easy of access in case of collision or any other accident. The Act of which this section is a part is entitled, "An Act in relation to fencing and operating railroads," approved March 31, 1874, and in force July 1, 1874. While the language of the statute is broad, yet the detail of the Act, together with the date of the same, clearly indicates that the Legislature could not have had in mind electric roads operating within cities, as no such cars were running at that time. The object of the section is plain, namely, in case of accident or collision in the country upon a steam road where such things are inaccessible, to enable employes or other persons available to assist in releasing passengers, who, as a result of the accident, have been confined in the cars. This reason could not, with any degree of necessity, apply to the road in question, as its entire road is practically through the city and very thickly populated communities; and for this reason the commission deems it unnecessary at this time to make an order requiring the respondent road to equip its cars with such articles.

As to paragraph 4, there is no testimony in the record whatever to justify this charge or to require the commission to take any action in relation thereto.

As to paragraph 5, the commission feels that the evidence is not sufficient to justify any action upon its part in relation to the same, and that the city of Chicago or village of Oak Park, if there is a manifest violation of law which the record does not show to our satisfaction, are amply able to take care of that matter as coming clearly within their jurisdiction.

As to paragraph 6, the record shows that the cars of the defendant road are not equipped with automatic couplers. The Act in regard to safety appliances on railroads is entitled "An Act to promote the safety of employes and travelers upon railroads by compelling common carriers engaged in moving traffic by railroads between points in the State of Illinois to equip their cars with automatic couplers and continuous brakes and their locomotives with driving wheel brakes and for other purposes."

Section 1 of the Act provides that from and after the passage of the Act it shall be unlawful for any common carrier engaged in moving traffic between railroads in this State, to use on its line any locomotive not equipped with power driving wheel brakes and appliances for operating the train brake system; or to run any train that has not a sufficient number of cars in it so equipped with power or train brakes; and the engineer on the locomotive drawing such train can control its speed without requiring the trainment to use the common hand brake for that purpose.

Section 2 of the Act provides that it shall be unlawful for any such carrier to haul or permit to be hauled on its line any locomotives, tender, car or similar vehicle not equipped with couplers, coupling automatically by impact, etc.

Section 4 provides that it shall be unlawful for any railroad company to use any locomotive, tender, car or similar vehicle that is not pro-

vided with secure grab-irons, etc. The title of the Act by using the words "and their locomotives" would imply the Act was only in relation to such common carriers that used locomotives.

Section 1 clearly indicates that it could not apply to an electric inter-urban car. The same may be truthfully said of section 2. And street cars are specifically exempted from the provisions of the Act by section 6.

The Act in regard to the inspection of safety appliances on railroads is entitled, "An Act providing for the inspection of equipment and operation of safety appliances on railroads engaged in moving traffic between points in the State of Illinois."

The language of sections 1 and 4 of said Act clearly indicate that it was not intended to apply to electric cars. The last mentioned Act was passed in order to enforce the provisions of the first Act, and, in our opinion, has no application to railroads operating by electricity. That being true the commission is not required to make any order in relation thereto. In this view of the law, the commission is sustained by the opinion of Attorney General Stead rendered to this commission Jan. 22, 1906.

There can be no doubt that the commission has the right to report such violations of law, as it deems proper, to the Attorney General or State's attorney of any county, and it has exercised that right and performed that duty whenever it deemed it proper under the record or proceedings before it. While a large number of the charges made by the petitioner in the petition and in the brief are not sustained by the testimony in every particular, they are of such a character that the commission has instituted an investigation of a number of these charges upon its own motion and will enter a proper order in relation to the subject matter of such investigation as soon as such investigation is complete, if the charges are proved to be true.

It is therefore ordered by the commission that the complaint herein be dismissed, the commission reserving the power to reinstate the case, if necessary, upon giving notice to the respective parties, should their inspection of such defendant road require any further order to be made herein.

By order of the commission this 20th day of June, 1911.

O. F. BERRY, *Chairman.*

RAILROAD AND WAREHOUSE COMMISSION

ON RELATION OF

JOHN A. NOSER

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RY. CO.

The petition in the above entitled cause sets out the fact that in 1904 a contract was entered into with the St. Louis, Iron Mountain &

Southern Railway Company to put in a spur at the flour mill at Rockwood; it appears from the evidence that the complainant herein, John A. Noser, was in fact the Rockwood Milling Company; it also appears that a contract was signed by the Rockwood Milling Company by its agent, or clerk, and what purports to be a copy of that contract is attached to the answer of the defendant.

The petitioner denies that he ever signed such a contract as is offered, but it is evident from the entire testimony that the matter of this spur put into his mill was brought about through and by a private contract between the petitioner and the defendant road. The spur was not put in by virtue of the statute upon a petition to the Railroad and Warehouse Commission, or the track built as allowed by the statute and the defendant road required to connect therewith.

The contract between the respective parties being a private one, it is not within the power or province of this commission to construe or determine the rights of the respective parties under that contract, the power of the commission being where a spur track from an industry or manufacturing plant is built to the railroad, and the business justifies, the commission has power to require a connection.

Whatever the business of the Rockwood Milling Company may have been in years gone by, it is evident from the testimony offered in this case that the business now would not justify the railroad in locating and maintaining a spur track in order to take care of that business, if they have provided other facilities for transportation to and from their station at that place. The record shows that the defendant has a main track, a team track and a passing track at that point. It also shows that the facilities other than the spur track are not what they should be and need material changes and improvements, and while the commission feels that it will be compelled to deny the prayer of the petition as to replacing this spur track, having jurisdiction of the respective parties, it feels justified under the evidence in ordering that the facilities for loading and receiving at that point be materially improved.

It is therefore ordered, adjudged and decreed that the defendant road proceed at once to properly grade and prepare proper approaches to their team track, so that persons receiving freight or shipping freight from said point shall have reasonable facilities therefor.

As to the liability or rights of the respective parties under private contract entered into by them, the commission expresses no opinion.

By order of the commission this 26th day of July, 1911, dated at Springfield, Ill.

O. F. BERRY, *Chairman.*

IN THE MATTER OF THE CHICAGO AND NORTH-WESTERN RAILWAY COMPANY ASKING FOR APPROVAL OF AN ADDITION TO INTERLOCKING PLANT AT CLINTON, IOWA, SAME CONTROLLING MOVEMENT OF TRAINS ON THE ILLINOIS SIDE.

It appearing to the commission that the Chicago and North-Western Railway Company has filed a petition, together with plans and specifications, for an addition to an interlocking plant which is installed near Clinton, Ia., for the purpose of protecting traffic passing over the drawbridge spanning the Mississippi river at that point, said addition being a "calling-on" signal to be located on the Iowa side, but comes under the jurisdiction of this commission insofar as it effects the locking of the apparatus governing the movement of trains from the Illinois side; and it appearing to the commission that said plans and specifications have been examined and approved by F. G. Ewald, consulting engineer of said commission;

It is therefore ordered, adjudged and decreed that the said Chicago and North-Western Railway Company be, and the same is hereby authorized, to install the said "calling-on" signal, according to said plans and specifications; and when said addition has been completed, the petitioner shall report the same to this commission for its approval.

By order of the commission this 22d day of December, 1910.

O. F. BERRY, *Chairman*.

IN THE MATTER OF RESOLUTIONS OF THE NEGRO PROGRESSIVE LEAGUE.

It having been brought to the notice of this commission that certain railroads in this State place placards in their cars on trains coming into and running through the State of Illinois, which placards state that certain cars or parts of cars are set apart for one class of people and certain cars or parts of cars for another class of people;

The commission find from the information furnished that the said placards referred to in the cars of certain railroads coming into this State, are for the purpose of calling attention to the fact that certain cars or parts of cars are for colored and other cars or parts of cars for white persons;

And the commission being fully advised, find that it is contrary to the laws of the United States and to the laws of the State of Illinois, for any railroad or other public carrier, to make any distinction between citizens of the United States or of this State, as to what car or part of a car, one class of citizens shall occupy or shall not occupy;

And the commission further find that it is unlawful and a violation of the spirit of both the Constitution of the United States and the laws of the State of Illinois to place in such cars any such placard, undertaking to make any such distinction between the citizens of this State;

And the commission being fully advised, it is hereby ordered, adjudged and decreed that any railroad having so posted any such placards in this State, shall immediately upon receipt of notice, remove the same, and shall not permit such placards to be posted in their respective trains or cars in this State.

By order of the commission this 23d day of February, 1911.

O. F. BERRY, *Chairman*.

SWIFT REFRIGERATOR TRANSPORTATION Co.

ARMOUR CAR LINES.

NATIONAL CAR LINE Co.

STREET'S WESTERN STABLE-CAR LINE.

On the basis of affidavits filed by the above named companies as to business done by them, and asking the commission as to their status under the law, the commission found that these lines are not common carriers and are not required to make annual reports, as required of the carrier companies. An order to this effect was entered Nov. 9, 1911, as follows:

In relation to your application, affidavit, and showing *in re* whether or not your company is a common carrier, permit me to say that the commission has examined the statements made by your company and the manner in which the cars are handled by you and, from the facts, find that the Swift Refrigerator Transportation Company does not within this State hold itself out to the public as a common carrier and that they are not engaged in the business of transportation and that its dealings as such company are not with the public in relation to transportation or refrigeration; and that it uses no motive power of its own connected with the cars, but that said cars are only leased or rented to other common carriers for the purpose of use by it.

The commission therefore holds that your company is not subject to the provisions of the Act entitled, "An Act to establish a Board of Railroad and Warehouse Commissioners and prescribe their powers and duties," approved Apr. 13, 1871; as amended by Act approved June 10, 1911; and is not required to file annual reports with this commission as required of common carriers in section six (6) of said amended Act.

By order of the commission, dated this 9th day of November, 1911.

O. F. BERRY, *Chairman*.

Above order was transmitted to all of above companies.

UNION TANK LINE COMPANY.

Statement made of business done by petitioning company and request for ruling of commission, as to their status as a common carrier, in regard to filing annual reports with this commission. Order entered as follows:

In relation to your application, affidavit and showing *in re* whether or not your company is a common carrier, permit me to say that the commission has examined the statements made by your company and the manner in which the cars are handled by you, and from the facts, find that the Union Tank Line Company does not within this State hold itself out to the public as a common carrier, and that it is not engaged in the business of transportation and that its dealings as such company are not with the public in relation to transportation or refrigeration; and that it uses no motive power of its own connected with the cars, but that said cars are only leased or rented to oil companies for the purpose of use by them.

The commission therefore holds that your company is not subject to the provisions of the Act entitled, "An Act to establish a Board of Railroad and Warehouse Commissioners and prescribe their powers and duties; approved Apr. 13, 1871. As amended by Act approved June 10, 1911," and is not required to file annual reports with this commission as required of common carriers in section six of said amended Act.

By order of the commission this 18th day of January, dated at Springfield, Ill.

O. F. BERRY, *Chairman.*

RAILROAD AND WAREHOUSE COMMISSION

V.

SPRINGFIELD CONSOLIDATED RAILWAY CO.

CHICAGO & ALTON RAILROAD CO.

In the matter of investigation of collision between street car and Chicago & Alton "Limited" at 5th and Rafter sts., Springfield, Ill., Jan. 11, 1912.

Appearances—For the defendant Springfield Consolidated Railway Co., P. B. Warren, Attorney and F. W. Long, Claim Agent; for the defendant Chicago & Alton Railroad Co., W. L. Patton, Attorney and R. A. Purcell, Claim Agent.

Investigation made Jan. 16, 1912.

Findings of the commission entered Apr. 24, 1912, as follows:

On Jan. 11, 1912, the Alton limited due in Springfield at 4:30 p. m., running a couple of hours late, struck a street car belonging to the

Springfield Consolidated Railway Company, at the crossing between said roads at 5th and Rafter sts., Springfield, Ill., about 6:00 o'clock p. m.

The evidence at the investigation shows that the street railway was in bad condition, being clogged with snow and ice, and that the company had had more or less trouble during the day with power.

The evidence shows further that the street car was in proper condition so far as all of its safety appliances were concerned, but that on account of ice and snow, the witness testified that it was impossible to move the car very fast, and that frequently they would lose their power entirely. The motorman testified that the snow was blowing to such an extent that he could not see anything up the railroad track;

It also appears from the testimony that this crossing is protected by gates, but at this time the gates were not operated in any way;

The evidence also shows that these gates are frequently not operated; no reason is given in the testimony why these gates should not have been operated at this time.

The engineer of the Chicago & Alton train testified as follows:

"I got up there in about fifty feet of this crossing and I saw this car coming and it was not going at an excessive rate of speed, but I knew at the speed he was going he was not going to be able to stop, so I brought my train to a stop as soon as I could, which was within a 100 feet, and he hit the mail car about middle ways of the car."

Taking the testimony all together it indicates that the weather was of such character as to make it difficult to see in any direction, and it is charitable at least, to say that none of the persons connected with the accident were wilfully negligent of their duty, yet there are some matters we desire to call special attention to.

First—That the gates of the Chicago & Alton Railroad Company were not working and did not work; had they been properly operated, this accident would not have occurred. It is exceedingly unfortunate to have a crossing protected by gates unless they are operated carefully and promptly, as the people rely upon them, and if they are not operated it would be better for the community if there were no gates there at all, and to the extent or not operating these gates properly, the Chicago & Alton Railroad Company is at fault in this matter, and the commission calls especial attention to the fact that these gates should be operated properly and we will expect this to be done.

Second—The record shows that the motorman on the street car went from the Chicago & Alton Railroad as brakeman to the Freeport electric cars as motorman, and to the following questions, he made the following answers:

"Q. How long did you work on there before you had charge of a car? A. At Freeport?"

Q. Yes. A. I was breaking in about two days.

Q. Breaking in? A. Yes.

Q. They gave you two days' education?"

The evidence further shows that this motorman worked there about six months and then came to Springfield and took a position as motorman.

The evidence further shows Joseph Bloyd, the conductor, had been conductor only one day on this car; that he had been in the employ of the company about six weeks, and that his first employment was on this road, learning and breaking in as a conductor. He further states that he had taken charge of a car and was made conductor after he had been working about eight or nine days, and that he had had no experience whatever with electric cars prior to that time. It is not strange that accidents occur under these conditions. It is only a wonder that many more serious accidents do not occur. From the appearance of this conductor he is man of more than average intelligence, and if we may judge from his testimony, he did the very best he knew how, but it is utterly impossible for a man to learn to properly take charge of a car and properly operate it, especially in case of emergency, in such a short time, and the commission feels that public service corporations, taking into their hands the lives of the public, should see to it only experienced men are put in charge of transportation. We cannot conceive of any more important position than that of conductor on a railroad train or street car, and we would not think of putting men in charge in any other business, of so important a matter without any experience, and while in this case there were no lives lost, yet that is a matter of good fortune, rather than care, and we must earnestly call attention of the Street Railway Companies to the fact that the commission considers it carelessness to place in charge of transportation wholly inexperienced men, and trust that greater care will be taken in the future in relation to training men before giving them charge of the transportation of human lives.

Dated at Springfield, Ill., this 24th day of Apr., 1912.

RAILROAD AND WAREHOUSE COMMISSION

ON RELATION OF

CITIZENS OF SEATON

V.

MINNEAPOLIS & ST. LOUIS RAILROAD CO.

Complaint of refusal to handle live stock except on Sunday and Tuesday of each week at Seaton, Ill., filed May 21, 1912.

Appearances—For the complainant, J. B. C. Lutz, Monmouth; for the defendant, R. S. Marshall, Asst. to Vice Pres. and Gen. Manager and H. G. Kruse, Superintendent.

Case heard June 6, 1912.

Findings and order of commission entered July 23, 1912, as follows:

The village of Seaton is located upon the line of the Minneapolis & St. Louis Railroad Company, county of Mercer and State of Illinois, and in a rich farming and stock raising territory.

The complaint alleges that the said railroad, the Minneapolis and St. Louis Railroad Company, at such station and other places along its line of road, refused to furnish freight cars to handle live stock shipments from such stations except upon Sunday and Tuesday of each week. The complainant objects to this limitation of service, and the record shows that it is detrimental to the best interests of the community.

The defendant railroad is a common carrier and as such, is, under the law, bound to furnish reasonable equipment upon reasonable notice for the shipment of live stock and grain offered to its road, and to furnish the same upon any day in the week (unless it should be Sunday). The refusal of the railroad company to furnish cars for shipment of live stock for any other days except Sunday and Tuesday of each week, results in placing upon the market all the stock of that community along its line of road on Mondays and Wednesdays.

The record shows that from 75 per cent to 80 per cent of the week's receipt of stock arrive in the city of Chicago those two days, which results, as the record shows in this case, in the congestion of the market and overloading of the yards at that time, and gives the buyers on the Chicago market an opportunity to reduce prices to the disadvantage of the shipper.

The record shows conclusively that a large number of people decline and refuse to ship their stock on Sunday, and under this rule this would confine such persons to one day for shipment of their stock to the markets.

The record further shows that this same road is shipping stock from other points along their line to Chicago over the same road every day in the week.

The record shows that Seaton has been and is a large shipping point, and that in many instances people have been compelled to drive their cattle quite a distance to other roads to their detriment, as they claim for the purpose of shipping, and also to haul or drive their hogs an unreasonable distance in order to ship them at any other time except upon the days mentioned herein.

There can be no question about the duty the defendant road here owes to the public in this matter. The rule adopted by it to furnish stock cars and ship the same only two days in each week, and one of those days Sunday, is an unreasonable rule and should not be permitted or allowed by this commission. It is possible that a rule limiting the time to a sufficient number of days in the week, might under certain circumstances be considered reasonable, and if agreed to by the railroad company and the communities through which the defendant road runs, might be approved by this commission, but it is insisted by the complainant herein that the community is entitled to service every day in the week save Sunday, and the commission finds nothing in the record to justify it in holding that such a demand is unreasonable.

It is therefore ordered, adjudged and decreed by the commission that the said Minneapolis & St. Louis Railroad Company be, and the same is hereby directed, upon reasonable request at all times, to furnish in reasonable time after such request, sufficient equipment for the shipment of live stock for the several shippers along their line of road in the State of Illinois, for shipment over their said line.

By order of the commission, this 23d day of July, 1912, dated at Springfield, Ill.

O. F. BERRY, *Chairman*;
B. A. ECKHART, *Commissioner*;
J. A. WILLOUGHBY, *Commissioner*.

ORDER OF THE COMMISSION PROVIDING FOR THE POSITION OF FLAGMEN ON TRAINS.

It having come to the knowledge of this commission that it is the custom throughout the State of Illinois, and a general practice to attach private and other special cars, and frequently empty coaches, to the rear of passenger trains, and that it is also the custom to keep such private, special or empty coaches locked so that the flagman on passenger trains and other persons in charge of said trains, cannot enter or pass through to the rear of said car or cars.

And it further appearing to the commission from an investigation of the facts that it is a practice well understood among railroad employes, that they are not to enter or pass through private or special cars when attached to regular or special trains.

And it appearing to the commission from further investigation that it is exceedingly important for the safety of the traveling public that the flagman be permitted to pass through and remain upon the rear end of passenger trains when in motion, and especially that he be permitted to pass through to the rear end of all passenger trains immediately upon stopping, for the purpose of protecting the rear of said train from approaching trains, and giving proper signals therefor.

And it further appearing to the commission that a flagman, when he is unable to pass through any car at the rear of train, is frequently compelled to get off the train and pass along the track to the rear end of said private or special car, thereby being very much delayed, as well as being dangerous for the flagman, and materially limiting his time to give signals, if such are necessary at the rear of the train.

And the commission being fully advised in the premises and thoroughly convinced from its examination of this subject, that it is necessary for the safety of both life and property of the traveling public, that said flagman, or some other employe properly designated for that purpose, be permitted to pass through to and remain upon the rear of such private, special or empty car attached to said train at any time.

It is therefore ordered, adjudged and decreed by the commission that hereafter no private, special or other car upon the rear of train, shall

be locked or in any manner closed so that said flagman or other person duly authorized by said railroad company, may not pass through to or remain upon the rear of said car at any time.

It is further ordered that said railroad company require said flagman, immediately upon the stopping of said train at any time, if he is not upon the rear of said train, to immediately pass thereto, for the purpose of carrying out proper directions given him by said company for the signalling of any approaching train, and to take all necessary steps for the proper protection of said train.

By order of the commission this 24th day of April, 1912, dated at Springfield, Ill.

O. F. BERRY, *Chairman*;
B. A. ECKHART, *Commissioner*;
J. A. WILLOUGHBY, *Commissioner*.

RAILROAD AND WAREHOUSE COMMISSION

V.

SPRINGFIELD, CLEAR LAKE & ROCHESTER INTERURBAN RAILWAY CO.

The unsafe condition of road and bridges having been brought to the attention of the commission, an inspection was made and order entered by the commission July 18, 1912, as follows:

The condition of the above road and the bridges thereon having been heretofore brought to the attention of the commission, the commission did on the 13th day of June, 1911, after an examination made by the consulting engineer of the commission, make an order in relation thereto, directing the officers and manager of said road to make said bridges on said road referred to, secure for travel and transportation to the satisfaction of the commission; also in said order the commission directed that the said bridge over the South Fork of the Sangamon river be replaced by a properly built concrete bridge, and that the entire road and bridges thereon be improved and repaired in such a manner as to make passenger traffic thereon safe.

Upon further examination by the commission it was ascertained that only in a small degree had the management of said road complied with the order of this commission, and at again coming to the knowledge of the commission that said road and bridges were in a dangerous condition, the commission had the same again inspected by its consulting engineer, also by Clifford Older, bridge engineer of the Illinois Highway Commission, and the commission by its chairman and secretary visited and inspected said road and bridges personally.

And from the report of said engineers after such inspection, and their own personal inspection, and being fully advised as to the conditions of said road and bridges, the commission finds:

First—That the entire line of road is in an unsatisfactory and in many places, unsafe condition.

Second—That the bridges across Sugar Creek and the North and South Forks of the Sangamon river, and each of them, are very much out of repair and wholly unsafe to be used in the transportation of cars and passengers.

It is therefore ordered, adjudged and decreed by the commission that the president, board of directors and other proper officers of said road be, and they are hereby ordered to cease carrying passengers or running of any trains therefor, between the city of Springfield and Clear Lake on said road, or across or over any of said bridges.

It is further ordered that the said president, board of directors and other proper officers of said road proceed at once to prepare plans and specifications for the rebuilding of said bridges, and submit the same to this commission within thirty days, and at such earlier date as to them may seem proper, and when said plans and specifications are submitted and approved by this commission, they shall proceed at once to rebuild said bridges according to such plans and specifications.

And said president, board of directors and other proper officials shall also proceed to improve said roadbed in such a manner as to make the same safe for the carrying of passengers thereon, and until such improvements are made and such bridges rebuilt, the said road shall not receive, transport or discharge any passengers over said road or across or over said bridges on any of them, the commission hereby finding that it is unsafe and dangerous and against public policy to permit said road to so operate or carry passengers thereon. This order shall be in full force and effect from this date.

By order of the commission, this 18th day of July, 1912, dated at Springfield, Ill.

O. F. BERRY, *Chairman.*

RAILROAD AND WAREHOUSE COMMISSION

ON RELATION OF

DURAND & KASPER

V.

CHICAGO & ALTON RAILROAD CO.

Complaint of loss and damage on shipment of dried peas between Joliet and Chicago, and asking for reparation.

Findings and order of commission entered June 25, 1912, as follows:

This claim is filed by Durand & Kasper Co., dealers in dried peas, for loss and damage on a shipment over the Chicago & Alton Railroad between Joliet and Chicago. It is alleged that there was delivered to the Chicago & Alton Railroad Company at Joliet, 1,732 pounds of dried peas in good order, and that the Chicago & Alton Railroad Company delivered to the claimant only 1,550 pounds and that five and one-half bags that were shipped were damaged by water and worthless, and in consequence

of said neglect, they were damaged to the extent of \$32.93, and the claimant asks that this commission direct the defendant road to refund said sum to the claimant.

The defendant road filed an answer in the form of a demurrer, alleging that the commission has no jurisdiction to entertain a complaint in this case, and asked to have the same dismissed.

The demurrer of the defendant road raises two questions for our consideration:

First—Under the Act governing the commission, is there power given to enter a judgment or order in cases of this character?

Second—If the Act itself has undertaken to give such authority in words, then is the Act constitutional?

It will not be necessary for the commission to go into the question of fact as to the shipment or the liability of the defendant road in this case, for the reason that the legal question raised by the defendant, when passed upon, settles the entire case.

The Act creating the Railroad and Warehouse Commission was passed in 1871 and remained practically without any amendments until 1911, when it was amended in many respects and the power of the commission materially enlarged. Prior to the amendment of 1911 the commission had no power or authority to hear or determine a case such as this, and the question now is, has it under the amendment to said Act?

If the commission has such power, it is in section 30, which reads as follows:

"The commission shall have power and authority to inquire into the business management of all common carriers, their passenger and freight rates, distribution of cars, granting of sidings, location of passenger and freight stations, use of and compensation for cars owned or controlled by them, relations of such carriers to the public; and of the public and public corporations to common carriers; the inter-relation between such common carriers, in so far as any such subject so to be inquired into shall affect or have any bearing upon the transportation of persons or property between points wholly within the State of Illinois; it shall have power and authority to receive complaints from shippers for loss or damage to property in the hands of common carriers and make inquiry as to methods and manner of adjustment of said claims; and the commission shall have power to make and enforce such orders as will secure the safety and accommodation of persons and property being transported by common carriers and as will prevent unnecessary or unreasonable obstruction to or interfere with the tracks, yards, locomotives and cars of common carriers."

And if in section 30, it is under the following language in such section:

"It shall have power and authority to receive complaints from shippers for loss and damage to property in the hands of common carriers and make inquiry as to methods and manner of adjustment of said claims."

Upon examination of the history of this bill, we find that the language last quoted was an amendment placed in the bill upon its passage, and there is no doubt but that it was an attempt by the Legislature to give much broader powers than the commission had heretofore in deal-

ing with claims, and for the purpose of receiving such complaints and making inquiry as to the methods of railroads for their adjustment, and even suggesting and providing the manner for their adjustment in many cases, there can be no question that such power was given.

It is sought here, however, to have the commission determine the amount due the claimants and make an order for its payment.

It is contended by the defendant road that the power of the commission in regard to loss and damage claims is strictly limited to receiving the complaint and making inquiry as to the method and manner of adjustment of the claims, in other words, confining the power of the commission strictly to the language used.

Such a strict construction would not generally be considered, but in view of the extraordinary contention on behalf of the claimant, namely the power to enter a judgment and by an order enforce its payment, the defendant has probably placed upon such language the proper construction.

We have examined the arguments of the respective parties and the authorities cited, and applying the construction placed upon Acts of this kind to commissions such as this, it is the opinion of the commission that the language in the Act in relation to claims, is not sufficient to authorize or empower the commission to render a money judgment or an order enforcing payment thereof.

The commission has in the past, and will no doubt in the future, continue to receive claims of this or a similar character, and when we have done so, we have as a rule, taken them up with the common carrier and undertaken to adjust them to the satisfaction of all parties concerned, and in a large number of instances have succeeded.

The great delay complained of by the public in the settlement and adjustment of claims, is no doubt what prompted the Legislature to amend the Act in that particular, giving the commission power and authority, which practically means direction, to if possible, provide a means for the prompt adjustment and settlement of claims. This part of the authority given, the commission has been acting upon and will continue to act upon it, but in this instance payment was resisted, and the question to be determined is not the manner of adjustment, but the power of the commission to enter a judgment and order its payment, and as above stated, the commission holds that it has no such power or authority, therefore the complaint is dismissed.

By order of the commission this 25th day of June, 1912, dated at Springfield, Ill.

O. F. BERRY, *Chairman;*

B. A. ECKHART, *Commissioner;*

J. A. WILLOUGHBY, *Commissioner.*

STATION---FACILITIES---DEPOTS, ETC.

CITIZENS OF LANSING, ILL.,

V.

THE CHICAGO, ST. LOUIS & PITTSBURG R. R. Co.

Appearances—For complainants, J. A. Crawley; for respondent, Charles Watts.

The petition in this case prays that action may be taken by the commission to compel the restoration of the station privileges and building at the village of Lansing, on what is known as the "Panhandle" road. It appears that in 1864 the Chicago & Great Eastern Railroad Company built the line of road now owned by respondent upon which the village of Lansing is situated, in the township of Thornton, Cook county, twenty-seven miles from the Chicago station, and near the Indiana line.

There is some conflict in the evidence as to the extent of the population of Lansing. Petitioners claim it numbers over 300, while respondent places it at 225. Each estimate is claimed to be based upon actual count. We do not, however, deem this question a vital one in this case, or one which it is necessary to settle to the nicety of a unit. Whether the population of Lansing be 300, or only 225, the community has rights which we will endeavor to determine as best we can from the evidence before us.

Lansing is not an incorporated town or village. Its lands are, however, subdivided, platted and sold by lot numbers; and the place has all the requisites of a legal municipality except the formal incorporation.

When this road was built in 1864 or 1865, a station building was erected and full station privileges established at the place called Lansing, and a regular station agent has been located and maintained there all the time until the fall of 1889, when such agent was removed; and a little later the station building was, on a Sunday, removed by the company from Lansing.

There is evidence before the commission showing the extent of the business transacted at Lansing. Quite a large trade is done there in

hay and coal, these being the most important items. The other business of the place is such as is ordinarily done in a community or village of similar size located near a great city, as Lansing is.

It appears from the evidence that prior to the building of the road a contract was entered into between the company building it and the proprietors over whose land the construction was proposed, whereby the right-of-way was granted to the company upon certain considerations, among which were the establishment of certain stations and the running of certain trains between the Chicago station and the Indiana State line. As the evidence does not advise us as to the manner in which the respondent company succeeded to the road and franchise of the original company, we are unable to say that this contract is material in a legal point of view in determining the rights of petitioners. If respondent came in by purchase at a judicial sale it would seem, under the ruling of the Supreme Court in the L. & N. case, 120 Ill., 48, that the obligations of the contract would not attach to respondent as such purchaser. This question will, however, be for the courts to decide in case this controversy shall be finally settled by suit.

It further appears from the evidence that a subscription was circulated on which money was raised from the residents of the vicinity to build the first station house at Lansing, \$1,200.00 being subscribed for that purpose. The particular station house so built had been replaced and was not the one removed by respondent from Lansing in November.

Although we do not base our opinion or action in this case upon the contract or the subscription mentioned above, yet they are circumstances of some moral value in arriving at petitioners' rights, and strongly persuasive to a full enforcement of those rights when ascertained.

A good deal was said in the course of the hearing about the motives which induced the superintendent of respondent to take away these station privileges. With this question we have nothing to do. It is the substantial rights of petitioners and of respondent which are before us for consideration. If the community known as Lansing is not legally entitled to depot privileges, then it could not get them, whatever secret or unjustifiable motive may have entered into the withholding of them. On the other hand, if this community is legally entitled to depot privileges, then it should have them, however sincerely, or in whatever good faith, these privileges may have been withheld.

The sale of tickets for Lansing was, after the removal of the station building, discontinued by the company; but on this point we accept the statement of the superintendent that the withdrawing of these tickets was a mere error, not intended by the management, which has since been corrected, and the tickets restored.

Among the reasons assigned by respondent for removing this station and withdrawing the agent are, that it became necessary to maintain an agent at South Chicago Junction on this line of road, something over a mile from Lansing, and that it will not pay the company to maintain another depot and agency so near by, at the village of Lansing.

It is also said that the privileges now accorded to the community known as Lansing are fully equal to those given to other villages or communities of like grade or importance upon the line of respondent's road. It is also claimed by respondent that the withdrawal of the agent does not subject the people of Lansing to any serious inconvenience, inasmuch as he continues to reside at Lansing and orders for cars, etc., can be given to him mornings and evenings when he is at home. The fact of the present agent's residence at Lansing is, however, only a coincidence. No guarantee is given for its continuance. The next agent may reside in Chicago, instead of Lansing, or this one may at any time remove there, for aught that appears.

Nor is it established to our satisfaction that the business of Lansing may be as conveniently transacted with the present facilities as with those formerly furnished, as respondent insists is the case. Indeed, it seems little less than absurd to insist upon such a proposition. With no station building where freight can be cared for between the time of its arrival and delivery, or between the time of its delivery at the track and the arrival of the train which is to carry it, and with no agent present to receive and bill freight or to sell tickets, and no place where passengers may find shelter while awaiting a train, no telegraph facilities by which cars may be ordered for shippers, it seems useless to contend that the people of Lansing are not subjected to a serious inconvenience over what many of them had a right to expect when their lot was cast in that community. A shipper wishing to order cars must go to a distant telegraph station on the line, unless he chooses to await the slow process of the mail. The fact that he may at present see the agent in the evening or the morning while in Lansing is simply his good fortune and is not a legal right he could ever insist upon in the courts, if he should hereafter be deprived of it. The resident of Lansing or of Thornton township, who wishes to ship less than a carload of freight from this point, has no resource but to go himself to the track where only a very indifferent "cinder platform" has been provided, and there await with his goods the coming of a freight train which may be hours behind time. He cannot bill his goods and go home leaving them under shelter at the risk of the company. He must personally see the conductor of the train, and depend upon the goods being billed from the next station. The receiver of freight is subjected to a like inconvenience. His goods are thrown from the train upon the ground, where he must find them and care for them, or leave them to be damaged by the weather.

None of the reasons assigned for withdrawing these station privileges are, in the view of the commission, sound, or sufficient in law. It is not conceivable that in the quarter of a century during which station privileges have been maintained at Lansing that the business and property interests of the neighborhood have not conformed themselves largely to the circumstances of the existence of such depot privileges. These interests were no doubt built up largely upon the faith that such privileges would be continued, and values have adjusted themselves on that basis. The fact that the business is not extensive, and that the

town is not a large one, does not affect the question, so long, at any rate, as it does not appear that a station can only be maintained at Lansing at a positive loss to the company. So the fact that the crossing of another road near this place made it necessary to keep an agent at the junction thus formed is, as the commission view it, beside the real question, as is also the fact, if it is one, that respondent furnishes no better facilities to other villages of like grade. It does not appear that other communities, circumstanced as this one is, have been deprived of station privileges which had long been voluntarily granted, and, to the existence of which the business interests of large numbers of people had conformed themselves. And even were this shown, it does not follow that because one community of people have not enforced their legal rights that another will therefore be compelled to relinquish theirs.

In the mind of the commission, the right of the residents of Lansing to have this station restored, and an agent kept there by the road for the transaction of their business, does not admit of a question.

It is therefore ordered that respondent restore said station building, and also keep hereafter an agent at the town of Lansing, and that it furnish reasonable train facilities at that point for the transaction of the business of the place, both as regards passengers and freight; and in default of a compliance with this ruling, it is further ordered that the Attorney General be requested to begin an action in mandamus to compel its enforcement by the courts.

Opinion rendered Jan. 24, 1890.

H. A. HAMMOND, ON BEHALF OF THE CITIZENS OF WYOMING, ILL.

V.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.

Appearances—For petitioner, H. A. Hammond; for respondent, W. C. Brown.

Petitioners against removal, A. H. Castle and J. H. Clock, and Attorney C. L. Billings.

OPINION BY LINDLY, *Chairman*.

This is an application in the matter of the location of a freight and passenger depot on the Chicago, Burlington & Quincy Railroad at Wyoming, Ill.

The original application in this case asked for the removal of the present railroad station at what is known as North Wyoming to what is known as South Wyoming.

The commission has examined the evidence introduced by the parties in interest, and is of the opinion that it has no power in the premises to compel the removal of a depot on the line of any railroad from one given point to another.

The evidence in this case shows that a large proportion of the population and business interests of Wyoming is located in what is known as South Wyoming, and that there is a large amount of freight and passenger business emanating from that point. The evidence further shows that there is a necessity for the location of a passenger and freight depot at South Wyoming.

The statute in this State provides: "That all railroads in this State carrying passengers or freight be, and they are hereby, required to build and maintain depots for the comfort of passengers and for the protection of shippers of freight where such railroad companies are in the practice of receiving and delivering passengers and freight, in all towns and villages having a population of two hundred or more on the line of their road and roads leased or operated by them." (Chap. 114, § 50, Hurd's R. S., 1897.)

The proof in this case further shows that South Wyoming has a population of over two hundred, and that the Chicago, Burlington & Quincy Railroad Company has been in the habit of receiving and delivering freight at a point in South Wyoming where it is proposed to construct a new depot.

This, in the opinion of the commission, is sufficient to bring the Chicago, Burlington & Quincy Railroad Company under the provisions of the above section referred to.

It is therefore ordered that the Chicago, Burlington & Quincy Railroad Company, within ninety (90) days from this date, shall construct a suitable railroad and passenger station at such a point at South Wyoming as shall best accommodate the people and the business interests therein represented.

It is further ordered that this cause be continued for such further action in the premises as may be necessary.

It is further ordered that the secretary of the board shall serve said Chicago, Burlington & Quincy Railroad Company with a copy of this order and opinion.

Dated at Springfield, Ill., Aug. 23, 1898.

VILLAGE OF CRAINVILLE

V.

ILLINOIS CENTRAL RAILROAD COMPANY.

Appearances—For petitioner, H. T. Crain; for respondent, John G. Drennan.

It is alleged in the petition filed in this case that Crainville is a village duly organized under the laws of the State of Illinois and has

a population of more than two hundred; that the Illinois Central Railroad Company runs through said village and is the only means of communication by railroad which the village enjoys; that there are located within the village a number of stores and other business houses, and that large quantities of freight originate at said village, and that the defendant hauls large quantities of freight consigned to residents of said village; that the respondent maintains no depot nor agent at said village, nor has it any accommodations for persons desiring to take passage on the trains of the respondent, or to ship or receive freight over its railroad. The prayer of the petition is that the respondent be compelled to erect and maintain suitable depot accommodations at said station.

The respondent filed an answer to this petition wherein it is claimed that there is no reasonable demand for the erection of a depot at Crainville, and that under the law of this State the respondent is not required to erect or maintain a depot at that point.

The evidence in the case discloses the following facts: That the village of Crainville is duly incorporated under the laws of this State; that the respondent's railroad runs through said village; that the village has a population of about 465; that for many years past the respondent has caused its trains to be stopped at a platform located in the village for the accommodation of the residents thereof, but has not maintained a depot, nor has it had an agent at said point; that four or five small stores are located in the village, the largest one of which transacts a business amounting to about \$11,000.00 or \$12,000.00 per year.

It further appears from the evidence that the city of Carterville, with a population of from 3,000 to 4,000 people adjoins the village of Crainville and that the line of the respondent's road runs through the city of Carterville, where the respondent maintains a depot and agent and other accommodations, which are conceded to be amply sufficient; that the depot of the respondent in Carterville is less than three-quarters of a mile from the central portion of the village of Crainville, and that the two municipalities are in fact but one city, although having separate organization. The respondent offered evidence, which was not contradicted, showing that the platform which it maintains at Crainville is within the switching and yard limits of Carterville, and that for several months prior to the hearing the gross receipts at Crainville amounted to only about \$40.00 per month, and it was claimed that the business at this station would not justify the railroad company in building a station at that point.

We are satisfied from this evidence that, conceding it to be within our power it would be unreasonable to compel the respondent to erect and maintain a depot at the village of Crainville and employ and station an agent at that point unless the statute of this State makes it compulsory upon every railroad company to establish and maintain depots at all towns and villages having a population of 200 or more, where such railroad company is in the practice of receiving and delivering passengers and freight. It is not customary in this State for railroad companies to maintain more than one station or depot in any of

the cities outside of the city of Chicago, and it is of course true that in all of the larger cities in the State many of the residents have to travel a greater distance than three-quarters of a mile to reach the railroad stations located in such cities.

It is claimed by the complainant that section 1 of an Act entitled, "An Act compelling railroad companies in this State to build and maintain depots for the comfort of passengers and for the protection of shippers of freight at towns and villages on the line of their roads," in force July 1, 1877, makes it obligatory upon every railroad company passing through any town or village in this State having a population of more than 200, to build and maintain a depot within the limits of such town or village.

Section 1 is as follows:

"That all railroads in this State carrying passengers or freight shall, and they are hereby required to build and maintain depots for the comfort of passengers and for the protection of shippers of freight, where such railroad companies are in the practice of receiving and delivering passengers and freight, at all towns and villages having a population of 200 or more, on the line of their roads and roads leased or operated by them."

It was obviously the intention of the Legislature in enacting this law to secure to the inhabitants of towns and villages having a population of 200 or more reasonable depot facilities for the accommodation of passengers and shippers of freight, but so far as we are advised it has never been held by the courts of this State that such depots must be erected and maintained within the limits of the city, town or village. Such a construction of the statute might lead to very unreasonable and unjust consequences. A railroad might barely touch the corporate limits of a city or village, or run but a few hundred feet within the corporate lines, and still it might be entirely possible that a depot located at a point without the corporate limits would accommodate the inhabitants of such city or village to a much greater extent than they would be accommodated by locating the depot within the limits.

Taking into consideration the evident object of the Legislature in the passage of this Act, we are of the opinion that the construction which the complainant seeks to place upon it is incorrect, and we think this view is supported by the case of *C. & A. R. R. Co. v. The People*, 152 Ill., 230. In that case the appellant operated a railroad through the city of Alton and the village of Upper Alton, whose territorial limit adjoined those of Alton on the east. Upper Alton had a population of 1,700. The railroad company maintained adequate depot facilities in the city of Alton, but had no station in Upper Alton. The distance from the village of Upper Alton to the station of the appellant in the city of Alton was about two and three-quarters miles. The people sought to compel the railroad company to build and maintain a station in the village of Upper Alton by mandamus. The court after reviewing the facts and a number of authorities said (p. 244):

"We do not understand it to be a rule of law that a railroad company that constructs its line of road through any portion whatever of the territorial limits of a town or village is absolutely required under any and

all circumstances to establish and maintain a station and depot on its line within the limits of such town or village. Nor do we understand there is any invariable rule of law that when two municipalities adjoin and one is substantially a suburb of the other, and a railway passes through a portion of each, there must necessarily be a station and depot in each. In all probability there are localities within the corporate limits of the city of Alton that are almost or quite as far from any railroad depot as is the village of Upper Alton; and it is in evidence here that in the great city of Chicago the appellant company has but one freight depot, although its line runs for many miles within the city limits."

In this case in addition to the depot in the city of Alton the railroad company had established a depot at a place called Stutz which was within the limits of the city of Alton, and some quarter or half a mile outside of the limits of the village of Upper Alton. In relation to this the court said:

"In our opinion this record shows that appellant has made reasonable provision for the business accommodation of the people of Upper Alton by the station it has established and a sidetrack it has constructed at the place sometimes called Stutz and sometimes called Upper Alton station, even though that place is a short distance beyond the territorial limits of the village."

This case was decided in 1894 and consequently at a time when the Act above referred to was in force.

Under the facts disclosed by the evidence in the case now before the commission it seems to be decisive.

Being of the opinion that the respondent has provided reasonable accommodations for the residents of Crainville by the erection and maintenance of a depot in Carterville less than three-quarters of a mile from the central portion of the village of Crainville the prayer of the petition is denied.

Dated at Springfield, Ill., this 24th day of March, A. D. 1908.

W. H. BOYS, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

CITIZENS OF FULLERTON AND VICINITY

v.

ILLINOIS CENTRAL R. R. Co.

Appearances—Messrs. Herrick & Herrick, for the petitioners; Mr. John G. Drennan, for the respondent.

The record in this case shows that from the time of the building of the road about 1870 until February, 1909, an agent was maintained in the village of Fullerton.

Fullerton is a small station and it is claimed is in the center of a rich farming community and a large amount of grain and live stock is shipped from that point, both north and south on the defendant's road. The record further shows that for a number of years last past an office had not been maintained at this place, but a merchant had been employed to look after the business as agent of the company, and the petitioners insisted that the business there was sufficient to justify maintaining a depot office and agent. It is contended upon the part of the defendant company that they have not abolished the station at that point, but receive and deliver freight there by billing at the stations near by, the station of Parnell being less than two miles south and DeWitt less than three miles north, both regular agency stations.

The defendant company also submitted figures showing the income at the station for a year beginning March, 1908. These figures show that in March, 1908, the income was \$59.01 that runs down as low as \$21.04 for the month of November and as high as \$105.00 in October, an average of something near \$50.00 a month during the period.

The defendant also shows that there are three north bound passenger trains that stop at this point and three south bound trains. The evidence further shows there never has been a regular depot at this point, the agency that was maintained being in a store nearby.

The particular, and in fact the only question raised in this record is, shall the defendant be required to maintain an agent at Fullerton. While it is true that the record shows it quite an important shipping point so much so that it would seem the railroad would make every effort to take care of the business so far as it was profitable, yet under former decisions of this commission and the fact that the record further shows that Fullerton is not an incorporated village, the commission must deny the prayer of the petitioners, being of the opinion that under the law and the facts as applied to the law in this State the commission would not be authorized to require the company to keep an agent at this point. Their authority as to the establishment of depots and agents being confined under the present law to cities and villages.

Dated this 16th day of June, 1910, Springfield, Ill.

O. F. BERRY, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

J. J. BOGAN, ET AL,

v.

SOUTHERN RAILWAY Co.

Appearances—Mr. Scott for the petitioner; Mr. B. A. Campbell for the Southern Ry. Co.

This is a petition by the citizens of Marlow and vicinity asking for an order requiring the defendant railroad to appoint an agent and establish

an office at the village of Marlow. Heard May 3, 1910. The only testimony offered on the part of the petitioner was a letter written to Mr. Scott by the petitioner. Evidence was submitted to the commission on the part of the defendant company showing that the total income from the office at that point would not average to exceed \$50.00 per month and it is insisted upon the part of the defendant company that the entire income from the sale of tickets and freight from that point would not pay the expense of an agent and the necessary expenses of an agency to say nothing about the investment in a depot at that point. The evidence shows that a box car in good condition is there for the reception of freight, etc., from time to time. But the evidence also shows that freight from that point both in and out is very light. The evidence also shows that the sale of tickets, averaging the future by the past, would not exceed \$150.00 per year and that the freight business would not average to exceed \$10.00 or \$12.00 per month.

The evidence shows that there has not been a depot at that point for more than three years. From the evidence as to the business transacted at that point, under the law, the commission would not be justified in ordering the rebuilding of the depot or the appointing of an agency. It also appears in the evidence that Marlow is not an incorporated village. That being true, the commission would have no power, under the law, as it now exists, to make a binding order in relation to a depot in this village, the law giving the commission jurisdiction only in incorporated cities and villages.

We have suggested to the railroad that the best possible service be rendered these people under all the circumstances. But applying the law to the facts in this case the commission are of the opinion that the prayer of the petitioner will have to be denied.

Dated at Springfield, Ill., this 16th day of June, 1910.

O. F. BERRY, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

CITIZENS OF WALSHVILLE

v.

CHICAGO, BURLINGTON & QUINCY R. R. Co.

The petition in this case states that the defendant, the Chicago, Burlington & Quincy Railroad Company intends to remove the station agent now located at Walshville, Ill., and, so far as a regular agent is concerned, close the depot at that point, and petitions the commission to require the defendant road to maintain an agent at Walshville, alleging that the public would be greatly discommoded in transaction of their business, both passenger, freight and express by such removal.

The petition further states that the inhabitants of the village of Walshville gave to the defendant road a sum of five thousand (\$5,000.00)

dollars and procured six and one-half miles of right-of-way for said road through the township, and also gave to the said defendant road, station grounds upon which said depot is located at the time of its construction. And that as a part of said contract and agreement the said railroad was to maintain a depot in the village of Walshville.

The record in the case shows that about the year 1882 the citizens of Walshville raised five thousand (\$5,000.00) dollars and procured the right-of-way through the township in which Walshville is located, of six miles for the Jacksonville & South Eastern Railway Company, and that afterwards in 1882 the village of Walshville passed an ordinance granting the right-of-way for the purpose of building and operating a railway through the village, and that they also gave grounds for the depot.

The record shows that under a contract at that time between the railroad and the citizens of Walshville, it was agreed that a depot should be located and maintained in Walshville. The defendant road became the successor of the road receiving this grant and the ordinance, and in many ways has recognized that contract. Later the village board granted the defendant road permission to change its depot, grade, tracks, etc., and gave them the location for the same. And it is claimed by the petitioners that this was all done in relation to the original contract, and with the understanding that the railroad should maintain its depot and continue an agent in Walshville.

It is contended upon the part of the defendant road that the business at Walshville does not justify the keeping of an agent and that the placing of a custodian who opens the depot thirty minutes before the arrival and departure of passenger trains, is a compliance with the statute and the agreement with the citizens of Walshville, if such an agreement was ever made, which they do not admit or deny.

The record shows that the agent was removed some months ago from the station and the depot placed in charge of a custodian, and that no person has been there representing the railroad for the purpose of receiving express, selling tickets, receiving freight or billing cars since that date.

The exact amount of earnings of the station is not very fully set forth by either one of the parties in the record, but the weight of the evidence would indicate that the business would justify, possibly, an agent being retained there.

Without going into minute detail of the facts as set forth in the record and arguments of counsel, the commission hold that the defendant road should furnish better facilities for taking care of the business in the village of Walshville. The commission would not hold that it was necessary for the defendant road to keep an agent at the depot to receive freight at night or express, but that it should during the day and reasonable evening hours, have some one to receive freight and express and to transact the usual business of the defendant company.

The commission believe under the record in this case, that the defendant road became the successor of the road which was given six and one-half miles of right-of-way and five thousand (\$5,000.00) dollars in cash, and depot site in the village of Walshville and other concessions

made by said village directly to the defendant road, and under such agreement and understanding the railroad should furnish reasonable facilities and take proper care of the depot at that point.

The commission hold that the placing of the depot in the hands of a custodian, who only builds a fire and lights the depot thirty minutes before the arrival and departure of passenger trains, is not a compliance either with the statute or with the general agreement between the parties as to the maintenance of the depot at Walshville.

It is therefore ordered, adjudged and decreed by the commission, that the defendant road place in charge of its depot in the village of Walshville, an agent or custodian whose duty it shall be to receive orders for cars when wanted, take charge of freight, receive express and transact the ordinary business of the agent in the village of Walshville during the day and reasonable hours in the evening, and that said defendant road shall comply with this order on or before the 1st of April, 1911.

By order of the commission this 22d day of March, 1911.

O. F. BERRY, *Chairman.*

RAILROAD AND WAREHOUSE COMMISSION

ON RELATION OF

CITIZENS OF PORTLAND

V.

ILLINOIS CENTRAL RAILROAD COMPANY.

The petition in this case shows that the city of Portland is a municipal corporation situated in the county of LaSalle, State of Illinois; that the population is about four thousand (4,000); that the defendant road has no depot or warehouse within the corporate limits of the said city of Portland; that the only freight or passenger facilities obtainable by the population of said city from the defendant road, is a depot and freight house situated about one-half mile from the center of population and main business district of said city; that the only way to reach said depot is to travel upon and across the right-of-way of the defendant road; that the location of the depot and freight house are not only inaccessible but dangerous, it being necessary in order for the citizens of the city of Portland to reach the present depot or freight house, to go upon and across the right-of-way of the defendant road or to descend a big hill and cross switch tracks, which are usually filled with cars, making it, at times, practically impossible to reach such depot or freight house.

There is attached to the petition a statement showing the freight and passenger business of the Illinois Central Railroad Company from this city of Portland and vicinity from December, 1909, to December, 1910, amounting to \$85,173.44, of which \$4,298.07 is receipts from tickets sold to passengers. The petition further alleges that if the depot was located within the city of Portland, that it would increase the sale of tickets to passengers at least \$400.00 per month.

The answer in this case denies the jurisdiction of the commission to make any order changing the depot. In the record it is also stated that this commission heretofore passed upon that question, holding that it had no jurisdiction to make an order.

The record shows that in 1903 proceedings were begun by the city of Portland for the change of this depot; the answer of the defendant then was that the depot facilities at Portland were ample; the question of jurisdiction was not raised by the defendant, and without determining whether we have jurisdiction to require this depot to be moved from its present location in the city of Portland, it will probably not be denied that the commission has power to require the defendant to furnish ample depot and warehouse facilities for the citizens of Portland, and while the answer of the defendant, made in 1903, that the facilities were ample for the citizens of Portland, might have been true at that time, record shows that Portland has grown very rapidly and its railroad needs have increased very largely since that time, while the depot and freight facilities have not been increased.

It appears from the record that there is a town by the name of Oglesby and that the present depot is located in that particular village, and that the postoffice is named Oglesby, while the petitioner herein is another municipal corporation by the name of Portland, and it has been urged upon the commission that these two towns should be consolidated, and one or the other of the names taken, when consolidated. This would appear to be a very proper thing to do, but this commission has no power along that line, and it is wholly immaterial so far as this record is concerned.

It would probably be true, as contended by the defendant road, that although the depot is in the village of Oglesby, if it furnished ample facilities for the people of the city of Portland, the commission would make no order in relation thereto, and would not have the power, under former decisions, to change the depot from one village to another.

The question involved is whether or not the people of Portland have ample passenger depot and freight house facilities as contemplated by law. A number of authorities have been cited in relation to the power of the commission in this case, both as to its jurisdiction and power to direct the change of the depot from Oglesby to Portland, or to compel a new depot within the city of Portland. Without, at this time, discussing any of these legal matters, the evidence conclusively shows, and it is admitted that the facilities furnished by the defendant at this particular place are not sufficient to meet the present demands of the city of Portland. The record shows a rapid and prosperous growth of this city and a large advance in both passenger and freight traffic.

The record shows and it is admitted that the only way the people of the city of Portland have to reach the depot where it is now located, is to pass over the right-of-way and switch tracks of the defendant road; that the location of the present depot is such that it is almost impossible to move freight to and from it; that the passenger depot as well as the freight depot is entirely too small for the needs of the community.

The record also shows a large income both from passenger and freight traffic sufficient to justify good facilities.

The record shows that there are two Portland cement mills recently erected in this city, manufacturing 8,000 or 10,000 barrels of cement per day and employing 700 or 800 men.

The record shows that the gross estimate by the station agent of the defendant road is, that the freight business would probably increase from 50 per cent to 75 per cent if the depot was in another location, and was accessible to the industries of Portland.

The record shows that the railroad company has been, from time to time, considering the question of improvements; they admit upon the hearing of this case, that they expect at an early date to erect a depot, and that a new one should be built and at a different point, and the only reason offered to the commission for not accommodating the public at this point is that they are using all they have to increase facilities at other points. I can hardly conceive of a greater need of better facilities than is presented by the admitted facts in this case.

The record further shows that there is a large amount of passenger traffic from the city of Portland and a large amount of freight business, and in the opinion of the commission, in order to properly take care of such passenger traffic and freight business, there should be located in a convenient place in the city of Portland a depot with passenger and freight facilities in keeping with the size of the city and character of the business transacted therein.

Section 1 of the Act requiring railroads to maintain depots for the comfort of passengers and for the protection of shippers of freight in towns and villages on their line of roads, approved May 23, 1877, in force July 1, 1877, reads as follows:

"That all railroads in this State carrying passengers or freight shall, and they are hereby required to build and maintain depots for the comfort of passengers and for the protection of shippers of freight, where such railroad companies are in the practice of receiving and delivering passengers and freight, at all towns and villages having a population of 200 or more on the line of their roads or roads leased or operated by them."

The record shows that the city of Portland has more than 200 inhabitants. In view of this statute, as well as the apparent necessity, the commission is of the opinion that the respondent road should erect within a reasonable time within the city of Portland, a suitable depot and such other buildings as is necessary for the proper taking care of the freight in and out of the said city.

It is therefore ordered, adjudged and decreed by this commission that said defendant, namely, the Illinois Central Railroad Company, erect at some suitable place within the corporate limits of the city of Portland a depot and freight house sufficient for the reasonable accommodation of the citizens of said city and the business interests thereof, and that said depot and freight house be completed and ready for use of the public on or before Feb. 1, 1912.

This commission reserves jurisdiction of the subject matter and parties to this proceeding for the purpose of making any further order that may be necessary.

By order of the commission this 20th day of June, 1911.

O. F. BERRY, *Chairman.*

RAILROAD AND WAREHOUSE COMMISSION

ON RELATION OF

CHAS. F. KRODELL, ET AL

V.

BALTIMORE & OHIO SOUTHWESTERN R. R. Co.

ILLINOIS CENTRAL R. R. Co.

The petition in the above entitled cause asks that the defendant roads be required to move their freight depot to another site, and to change certain tracks, which it is claimed are endangering life and property in the village of Odin, Ill. Considerable testimony was offered by each of the respective parties, and there is no serious conflict between the witnesses, the facts being practically admitted to be the same by all parties concerned. The evidence, together with plats and photographs filed, show the freight depot is located between two side tracks and the main track of the Baltimore & Ohio Southwestern Railroad Company, the main track of the Baltimore & Ohio Southwestern R. R. running east and west immediately south of the freight depot, and at a distance of some 23 or 24 feet north is a switch track running parallel with the main track, and immediately north of this switch track is another switch track. The freight depot is a structure some 56 feet long and 16 feet wide, with a platform and steps at either end for ascending to the platform. The only way at present to get into this depot to unload for shipment or to get freight for delivery, is to drive in between the switch tracks and main track, and turn around over the switch track or main track; this is a very unsatisfactory as well as somewhat dangerous condition, as admitted by all, and the commission have no doubt that this condition should be immediately remedied.

It is contended upon the part of the complainants that the depot should be moved one block west and away from the business center of the village, and it was stated that the village had offered ample ground and street privileges for that purpose. It is also claimed that it is inconvenient and undesirable to have the freight depot located at its present place.

The defendant roads object to moving the depot and claim that the suggestions made by the complainants are impractical and should not be carried out for reasons set forth in the record. As a remedy for the condition at this point, the Baltimore & Ohio Southwestern Railroad Company state they would extend their present loading track, which

is from eleven to twelve car lengths, to forty car lengths; by doing this, they could then take the offerings of the Illinois Central Railroad Company entirely out of town, removing same from transfer tracks on which they have been delivering and storing cars heretofore; they also state they could then shove the cars clear to the west end of the track, getting them entirely from in front of the business buildings of Odin, and in making deliveries from their line to the Illinois Central R. R., they could make light deliveries, shoving them east clear through the transfer, up to the north end of their yard, and keeping at least 100 feet open on either side of the street crossing. They state they would guarantee there would be no cars left within 100 feet of the street crossing from the north, neither would there be any to the west closer than 100 feet, and that the only cars that would be placed on these two transfer tracks would be from one to three, stopping in front of the depot only when necessary by reason of transferring out of the cars into the freight house, and from the freight house into the cars, meaning thereby the loading and unloading of freight less than car load lots.

It appears from the testimony that with the present facilities the railroads are practically forced to do their switching over the street crossing and over these transfer tracks, which is undesirable and should not be permitted.

It is insisted by the railroad company that to move the freight depot from its present location to where it is desired by the complainants would put it so far from the passenger depot that their agent would have no oversight and could not transact the business necessary to be done at the freight house, and that the business there would not justify keeping an employé in the freight house at all times, their one agent doing the work at both the passenger and freight depots, and it is easy to see how this condition of affairs exists, and that if the depot was moved the distance desired by the complainants, it would make it impossible for one man to manage both houses.

The commission, after examining the testimony carefully, together with plats and photographs filed, which show the situation very clearly, are of the opinion that they would not be justified in ordering the removal of the depot from its present location, except in so far as it is necessary to comply with the proposition made by the railroads to the complainants, and it is also a doubtful question of the power of the commission to order the removal of the depot, and it surely has no power to do so, unless it is clearly found from the evidence that the present location and facilities are wholly inadequate, or are so dangerous that they should not be permitted; this the commission cannot find from the evidence in this case.

The commission is of the opinion that the improvements offered by the railroad company, as shown by the testimony and as set forth in their plat filed herein, will in a large measure remedy the conditions complained of in the petition, and it is also evident from the signatures of the respective petitions and that there is a difference of opinion in Odin as to just what ought to be done, and taking the opinions as a basis, it would seem that the majority of the people will be satisfied with the improvements indicated.

It is therefore ordered, adjudged and decreed by the commission that that part of the petition praying for the removal of the freight depot in the village of Odin to another point indicated on the plat filed herein by the complainant, be denied and, that the defendant road, the Baltimore & Ohio Southwestern Railroad Company, be and the same is hereby directed to proceed at once to change the switch tracks and move the freight depot in compliance with the plans set out in the blue print filed herein by the defendant road, and that they complete the same within ninety days from this date, and when such improvements are completed, that they report the fact to this commission.

The commission reserves full jurisdiction of the parties and subject matter herein for the purpose of making any further order that may be necessary for the carrying out of the order herein made.

By order of the commission this 26th day of July, 1911, dated at Springfield, Ill.

O. F. BERRY, *Chairman.*

RAILROAD AND WAREHOUSE COMMISSION

ON RELATION OF

EQUALITY COMMERCIAL ASSOCIATION

V.

LOUISVILLE & NASHVILLE RAILROAD CO.

Complaint of location and conditions surrounding depot at Equality, Ill., filed May 2, 1911.

Appearances—For the complainant, W. T. Scott, Attorney, Harrisburg, Ill.; for the defendant, J. M. Hamill, District Attorney.

Case heard Jan. 2, 1912.

Findings and order of commission entered April 16, 1912, as follows:

The petition herein asks for the relocation of the depot in the village of Equality, Ill., and states that the depot is situated in the extreme southwestern part of said village and barely within the limits of the same, and that by reason of its location it is impossible for said village to build side walks to said depot; that there is a deep ravine or gulch between the depot and village and that every year the back water gets up into the ravine and shuts off the public from direct access to the depot; that the depot is in many other ways inadequate and inconvenient and unsafe for the transaction of the public business of that community.

The petition further states that many years ago the depot was located at another point in said village, and for reasons unknown, was changed to its present location, and that said railroad company has frequently promised to move said depot from its present location to another location hereinafter described, but that said railroad company has failed to comply with these promises.

The record shows that before the present railroad was built, the Alton & Shawneetown Railway Company obtained the right-of-way for road, including lot twenty-one in the village of Equality, which was donated to it for depot purposes, and the right-of-way including said lot passed into the hands of the St. Louis & Southeastern Railroad Company which built the road on said right-of-way and erected and for some years maintained a depot on said lot; said depot was afterwards destroyed by fire and when the present railroad company erected a new station, it was built about twenty-eight hundred feet west of the old depot site, and has since been maintained at that point, and is the building and location now complained of.

The record shows that the ground where the depot is now situated is very low, and the evidence also shows that the railroad company has been compelled to put the first floor of the station about six feet above the ground, in order to keep it above high water, and the entrance to the depot is over a flight of stairs consisting of six steps.

The record also shows that the platform in front of the depot is on a level with the floor of the baggage car when the train is standing in front of the depot and that the express and baggage are run out on trucks over gang planks that are placed on the floor of the baggage car and the depot platform; that when the baggage car is stopped in front of the platform to unload express or baggage, if the train is going east, the coaches are entirely west of the platform and the lowest step about twenty inches above the ground, and when the train is going west the coaches are east of the platform and the lowest step about twenty-six inches above the ground. It is claimed that it is dangerous and inconvenient both in entering and leaving coaches. It also appears that when they are loading and unloading baggage and express, the public is compelled to pass under these gang planks, and it is insisted that this is both inconvenient and dangerous.

The record shows that the present location of the depot is about twenty-five hundred or twenty-six hundred feet from the business portion of the village; that there is a deep, wide ravine or gulch between the present depot and the business portion of the village; that the water backs up in this ravine every year and sometimes three or four times between the first of January and the first of April, and remains sometimes for a period of six weeks, and that during these periods the only means of access from the business portion of the village to the depot and from the depot to the business portion of the village, is to go down a street about midway between the two depot sites to the railroad and walk down the track over the trestle work that crosses this same ravine and on to the depot. The testimony shows that this is very inconvenient and expensive in handling freight and dangerous to pedestrians going up and down the railroad track or the right-of-way, and that such traffic is in direct violation of the notice of the railroad company along such right-of-way which reads "No Trespassing Allowed."

The record further shows that the farming community west of the depot and the inhabitants of the village east of the depot are practically shut off from the use of railroad and depot every year for a period of from four to six weeks.

The record further shows that it would be very impractical and very expensive, if at all possible, to build a street and side walk sufficient to accommodate the public from the business part of the village to the depot, where the same is now located; that the present sidewalk is graded as high as it is possible to grade the street, and yet the water runs over it several feet every year for quite a period each year.

The record shows that the lot where the complainants desire the depot to be located, is about twenty-eight hundred feet further east, and that the water has not disturbed said locality, and that the depot could be built upon the ground, whereas it is now six feet above the surface, with nothing under it, which makes the depot exceedingly hard to heat and very uncomfortable for the winter season of the year, whereas this could all be avoided if the depot was located upon the lot referred to. This lot the record shows, was originally used by the railroad company for a depot.

The record further shows that the lot upon which they desire the depot relocated is about five hundred or six hundred feet from the main business portion of the village, and that the public in coming into the village of Equality, in a large measure, pass along the public highway where they desire the depot re-located, and that said re-location is much more convenient both for the country people of the entire vicinity and the people of the village as well.

The record further shows that during all of those high waters all of the freight has to be trucked up the railroad track about fourteen hundred feet and then hauled up a steep grade to the business houses of the village.

There is no particular controversy over the facts as above stated; there are two contentions made by the defendant road; first, that the objections urged by the petitioners are to the topography of the country, and that they are not responsible and should not be so held for the overflow of the water and the general condition of the ground in that locality; second, that having a depot in the village of Equality, the commission has no power or authority to direct any re-location, and the railroad company insists that they are the sole judges of where the depot shall be located.

We agree with counsel for the defendant road as to the general principle that the railroad company is given power "to erect and maintain all necessary and convenient buildings and stations, fixtures and machinery for the construction, accommodation and use of passengers, freight and business interests, or which may be necessary for the construction or operation of said railway."

We also agree with counsel for defendant that the statute requires all railroad companies to erect depots at all towns and villages on their respective lines of road, having a population of two hundred or more, but it does not prescribe where such depots shall be located or built, and we disagree with counsel in the statement that that matter is left entirely to the discretion of the railroad company.

It may seen at first that the statement made by the defendant, that the railroad company is in no way responsible for the topography of the country or the fact that there is a deep ravine and that the water overflows, etc., is true, yet it will hardly be contended that under the laws of

this State as construed by the courts, that the railroad company in locating its depot, has complied with the statute if it builds a depot at a point within the corporate limits of the village, where by the nature of the ground or the overflow of water, it would be inaccessible to the business interests of the village and to a large number of citizens. The object of the statute in requiring railroad companies to build a depot in all villages of two hundred or more inhabitants, was for the purpose of giving the business interests and the citizens of the community proper accommodations both for passenger and freight traffic; a depot would be entirely useless in a village unless citizens can have access to it, and the commission believes that a fair construction of the statute in relation to the location or re-location of depots, would be that it is the duty of a railroad company to locate its depot in the best possible place in order to accommodate, at the least expense and inconvenience, the citizens of the village in which such depot is located. The statute provides that such depot shall be kept comfortable for passengers; it shall be kept open and lighted prior to the arrival and departure of trains; that there shall be suitable platforms for ingress and egress to said depot and to said trains, all of which clearly indicates the general intention of the statute—that the railroad, being a common carrier, shall so operate its road, and so locate, furnish and keep its depot, as to accommodate the public.

It is evident from the record that the depot in the village of Equality is not located in the best place for the convenience of the citizens and business interests of the village, and it is evident that on account of its present location, there are four to six weeks each year when the public is practically cut off from ingress and egress to said depot in the usual way; it is also evident from the record that at such times people are compelled to travel up and down the railroad track for several hundred feet, which is dangerous as well as inconvenient, and that in doing so, are trespassers upon the right of way of the railroad company.

It is also evident from the record that if it is possible, it is not practical to build a suitable sidewalk from the village to the depot, and the commission feels that the defendant road should not place an unnecessary burden upon a village by locating its depot at a point where it would be very expensive, if not entirely prohibitory, to build a proper street and sidewalk to said depot, and especially is that true, when by the relocation of its depot a few hundred feet away, the distance from the business interests of the village to the depot would be very materially lessened, and a much larger community accommodated, not only from the village but from the country roundabout.

It is also manifest that a depot upon stilts six feet high, will necessarily be very hard to keep warm and comfortable in the winter time, as is stated in the record.

While we realize that the courts in construing the statutes, have said that when a depot is once located by the railroad company, which reasonably accommodates the public, they cannot be required to build an additional depot or relocate the present one, that is not applicable here, as the facts in the case referred to are far from being the facts in this case, and the commission holds, under this record, that the present depot is

not properly located for the reasonable convenience of the citizens of the village of Equality. The demand here by the petitioners is not for an expensive or an elaborate depot, the record showing that they would be contented with the same depot relocated where it would be more convenient and safe and could be made more comfortable, and in this case the commission finds that the present location of the depot is inaccessible and inconvenient and is so located on account of conditions over which there is no controversy, that there are long periods each year when the people are practically cut off from the use of said depot for passenger and freight service, and that the depot in its present location does not reasonably serve the community for the reasons hereinabove indicated; that the manner of loading express and baggage is dangerous and that the people being compelled to travel up and down the railroad track and on the right-of-way is also dangerous and against public policy and should not be permitted by the defendant road, and their depot should not be so located as to require the citizens to violate the law by trespassing upon their track or right-of-way.

The commission further finds that said lot twenty-one referred to, where said depot was formerly located, is a proper location for a depot; that the present depot moved there or one located there will properly and reasonably serve the public; that such location will be more convenient and much less dangerous to the public than where said depot is now located.

The commission being fully advised, it is hereby ordered, adjudged and decreed that the said defendant road on or before Aug. 1, 1912, either remove its present depot to said lot twenty-one referred to in the proceedings herein, or erect a suitable depot on said lot for the use and convenience of the citizens of the village of Equality.

By order of the commission this 16th day of April, 1912, dated at Springfield, Ill.

O. F. BERRY, *Chairman*;
B. A. ECKHART, *Commissioner*;
J. A. WILLOUGHBY, *Commissioner*.

RAILROAD AND WAREHOUSE COMMISSION

ON RELATION OF

E. D. JACOBUS, ITASCA, ILL.

V.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO.

Complaint of proposed removal of facilities for loading and unloading live stock at Itasca, Ill., filed Feb. 24, 1912.

Appearances—For the complainant, F. A. Smith, Attorney, Chicago; for the defendant, O. W. Dynes, Commerce Counsel.

On statement of attorney for complainant, temporary restraining order was entered by the commission Feb. 26, 1912.

Case heard Apr. 4, 1912.

Findings and order of commission entered Apr. 4, 1912, as follows:

This cause coming on for further hearing, the respective parties being present and after an informal hearing and arguments of the respective parties, the commission being fully advised in the premises it is hereby ordered that the respondent company proceed to erect a suitable and proper stock pen, yards and chutes in or near the village of Itasca, and that said stock yards, sheds, pens, chutes, etc., be completed ready for use by the public by Aug. 1, 1912. It is also ordered that the stock delivered by the said railroad to the present stock yards in Itasca shall not remain in said yards longer than three hours after the cars have been placed and the stock unloaded into said yards. That the said respondent shall keep said yards in good condition during the period herein above referred to. It is further ordered that the former order in this cause entered Feb. 26, 1912, shall be and remain in full force and effect except as modified by this order.

By order of the commission, this 4th day of April, 1912.

O. F. BERRY, *Chairman.*

RAILROAD AND WAREHOUSE COMMISSION

ON RELATION OF

H. H. STANLEY, ET AL,

V.

CHICAGO & EASTERN ILLINOIS RAILROAD CO.

CHICAGO, BURLINGTON & QUINCY RAILROAD CO.

Complaint of no station facilities for either passenger or freight service at Hudgens Junction, Ill., filed March 4, 1912.

Appearances—For the complainants, H. H. Stanley, Marion, Ill.; for the defendant Chicago & Eastern Illinois Railroad Co., E. H. Seneff, General Solicitor; for the defendant Chicago, Burlington & Quincy Railroad Co., J. A. Connell, District Attorney.

Case heard April 3 and May 7, 1912.

Findings and order of commission entered June 11, 1912, as follows:

The petition in this case shows that Hudgens Junction is located at a point where the Chicago, Burlington & Quincy Railroad forms a junction with the Chicago & Eastern Illinois Railroad.

It alleges that there are no arrangements made at said junction for any station or freight accommodations; it further states that the nearest railroad point south is Goreville, five miles; that the nearest railroad point

north of Hudgens Junction on the Chicago & Eastern Illinois Railroad is Marion, eight miles; the nearest station north on the Chicago, Burlington & Quincy Railroad is Herrin, fourteen miles.

This record shows that at Hudgens Junction is a crossing of the Chicago, Burlington & Quincy Railroad with the Chicago & Eastern Illinois Railroad, and that there are no buildings of any kind or character at that point.

The record further shows that Hudgens Junction is located immediately on top of what is known as Saline Bluff; that Saline creek flows under a bridge that is seventy-eight feet high; that is the condition of the approach on the south, west and east sides; on the north side immediately towards Hudgens there is an inlet, but it is a small, narrow, bad road, not more than fifteen or twenty feet wide.

The record further shows that it would be practically impossible from an operating standpoint to stop trains at Hudgens Junction on account of the grade and other surrounding conditions.

The record further shows that there is a small village called Hudgens two miles north of Hudgens Junction; that at said point there are two stores, a postoffice, a blacksmith shop and a mill; that there are a couple of churches and school houses nearby.

It further appears from the record that there is a station at this point where they receive and discharge passengers and freight, and that the service is satisfactory to the community at that point, and that quite a large business is done for a small place.

It further appears from the record that the railroad company was given the right-of-way through sixty acres of ground 150 feet wide, and the village was surveyed at this point at the time of the building of this road.

It further appears from the record that a petition was filed in this proceeding by a large number of citizens nearby Hudgens, asking that the commission do not remove the station from Hudgens to Hudgens Junction, and also opposing the locating of any station at Hudgens Junction.

The evidence clearly shows that the country round about Hudgens is a fine farming country; that the public roads are in good condition and that the inlet and outlet at Hudgens is good, while the record as strongly shows that the inlet and outlet at Hudgens Junction is very poor.

It further appears from the record that at the village of Hudgens the railroad company has a station track, team track and stock pens, all of which would have to be removed if the change was made to Hudgens Junction.

It further appears from the record that it would be impractical to locate them at Hudgens Junction, and from the record, as shown by the petition of citizens, it appears that a larger number of the citizens of the community will be accommodated by allowing the station tracks and yards to remain at said station of Hudgens; it would also work a great hardship on the persons who have located at Hudgens in view of the tracks and yards having been located there.

For the above reasons the prayer of the petition must be denied.

By order of the commission this 11th day of June, 1912, dated at Springfield, Ill.

O. F. BERRY, *Chairman*;
B. A. ECKHART, *Commissioner*;
J. A. WILLOUGHBY, *Commissioner*.

RAILROAD AND WAREHOUSE COMMISSION

ON RELATION OF

C. M. CLAY BUNTAIN, KANKAKEE, ILL.,

V.

CHICAGO & EASTERN ILLINOIS RAILROAD CO.

Complaint of removal of stock yards on north side of Kankakee river near Momence, Ill., in fall of 1911, and asking that defendant be compelled to maintain at least two small stock pens at or near the location of the old yards on the north side of the river, filed April 25, 1912.

Appearances—For the complainant, C. M. Clay Buntain, Attorney, Kankakee, Ill.; for the defendant, E. H. Seneff, General Solicitor.

Case heard June 6, 1912.

Findings and order of commission entered July 23, 1912, as follows:

The complaint in this case charges and the record shows that for thirty-five years prior to the fall of 1911, the defendant road had maintained stock yards and scales along its right-of-way on the north side of the Kankakee river at the outer edge of the village of Momence for the purpose of receiving and shipping live stock.

The record also shows that for the past few years the defendant has maintained a second set of stock yards along its right-of-way on the south side of the Kankakee river for the same purpose. The stock yards located on the south side of the Kankakee river, by wagon road or street, are approximately two miles from the stock yards on the north side of the river.

The complaint charges and the record shows that in the fall of 1911 the defendant company wrecked the entire stock yards on the north side of the river, taking away the scales, and that it is almost impossible at this time to load or unload cattle from the Chicago & Eastern Illinois Railroad or to receive stock at such point arriving on said road.

The complaint alleges that the removal of these yards has worked a hardship upon persons living on the north side of the Kankakee river for several miles to the north and other directions from the village of Momence.

The complaint charges and the record shows that persons living on the north side of the Kankakee river are compelled to drive their cattle and

hogs two additional miles and through the village of Momence across two wagon bridges over the Kankakee river referred to, or through the Kankakee river at times to the south yards.

The complaint charges and the record shows that where shippers are compelled to take their stock to the south yards that they have to shut their stock from feed much earlier, start them much earlier, and that frequently they have considerable trouble getting through the village and that when they break away and get into the Kankakee river, the cattle frequently drink such quantities of water as is very detrimental to them.

The complaint also charges that it is impossible to drive hogs or sheep from the north side across said bridges over the river to load them at the south side, thus compelling the farmers on the north side to haul all their hogs and sheep to market, which they claim could be driven at much less expense.

The complaint charges and the record shows that some of the residents near Momence have driven their cattle several miles further to Grant Park to load them rather than undertake the hardship of getting them to the south side yards, and the complaint asks that an order be made requiring said north side yards to be re-established for the use and accommodation of the farmers and shippers north of the Kankakee river and of the village of Momence.

Generally speaking and under ordinary conditions, a railroad company would not be required to maintain in the village the size of Momence, more than one set of stock yards, but the conditions in this case are out of the regular order. Momence is a village of some 2,500 population, originally located on the north side of the Kankakee river, and its principal business houses and residences as well, are still located on that side of the river, and the railroad station, stock yards, etc., were located on the north side where they remained for some thirty-five years. For convenience sake and possibly for an extension of room, the railroad company moved some of its terminal facilities to the south side, where it is also at that time established stock yards.

It is manifest that the removal of the north stock yards, thus compelling the people north of Momence, to take their stock two miles further, and a goodly portion of that distance through the village of Momence and across two bridges over the Kankakee river or through the Kankakee river, is a much greater inconvenience than it would be under ordinary circumstances, the inconvenience being the drive through the village across the bridges or through the river, which is very difficult and not infrequently disastrous to stock, and also across additional railroad tracks, as the record shows. The yards maintained on the north side originally seem to have been quite extensive—they were also fitted up with a pair of scales for the convenience of the public.

The record in this case shows that the shippers are asking only for two pens, just sufficient to handle a carload of stock at a time, and do not ask the road to re-install scales at that point, and the record further shows that the probable cost of such yards would not exceed \$150.00, and the maintenance of same something near \$25.00 per year.

The record shows that in 1910, there were twenty-five carloads of stock shipped from the point on the north side of the river, and the revenue derived therefrom was \$411.96; that there were in about nine months of 1911, fifteen cars of stock shipped at a revenue of \$257.98; that there were received in 1910 at the north yards, ten carloads of stock at a revenue of \$162.73, but only four car loads were received in 1911; the reduction of shipments from the north yards is natural, for it is evident from the record that the yards were not maintained and were possibly practically unfit for use.

The entire record shows good receipts for shipment of stock from that point from both yards. The location is unfortunate both for the community and the railroad company, but the shipper should not alone suffer for that. While, as a rule, the commission would not be inclined to require a double set of stock yards at any location, but in view of the record in this case, and the peculiar physical condition of the territory, the commission holds:

That the demand made by the shippers of the community, under all the circumstances, is a reasonable demand, and that the railroad company should install a stock yard of at least two pens with a proper chute for loading and unloading stock, on the north side of the river, either at the original locality, or some locality equally suitable for the purpose, and that same should be done within sixty days from this date.

It is therefore ordered, adjudged and decreed by the commission that the said Chicago & Eastern Illinois Railroad Company install such yard with at least two pens as hereinabove stated.

By order of the commission this 23d day of July, 1912, dated at Springfield, Ill.

O. F. BERRY, *Chairman*;
B. A. ECKHART, *Commissioner*;
J. A. WILLOUGHBY, *Commissioner*.

TRAIN SERVICE.

CITIZENS OF SHAWNEETOWN

V.

LOUISVILLE & NASHVILLE R. R. Co.

Appearances—For complainants, W. R. McKernon and Thomas R. Reid; for respondent, J. M. Hamill.

SPRINGFIELD, Jan. 3, 1893.

Hon. W. R. McKernon, State's Attorney, Shawneetown, Ill.:

DEAR SIR—Answering your letter of recent date to Mr. Paddock, secretary of the Railroad and Warehouse Commission, wherein you inquire what decision the commissioners have come to upon the complaint of the citizens of Shawneetown against the Louisville & Nashville Railroad Company, I have to say that the commissioners have as yet rendered no decision or opinion in the case. Although convinced that the passenger service between McLeansboro and Shawneetown is not such as is desirable, it seems to be very questionable whether the law affords any remedy for the unpleasant state of affairs which exists. I will here briefly state the difficulties which the commissioners have encountered in their attempt to find a way to afford legal relief to the citizens of Shawneetown.

The complaint of the citizens of Benton, Franklin county, against the "Cairo Short Line" embodied, substantially, the same state of facts presented in the complaint of the citizens of Shawneetown. The commissioners being in doubt in the Benton case, and having in view the fact that the Attorney General is made, by statute, their legal adviser, referred the whole question of their power to compel additional train service, to the Attorney General. His elaborate opinion upon this question, and his view of the law applicable to the facts presented in the Benton petition, will be found printed in our report of 1889, page 196.

The conclusion of the Attorney General was that the railway commissioners of Illinois are without power to enforce relief upon the state of facts presented by the citizens of Benton, which facts, we have before said, are practically identical with those presented in your petition.

It appeared in the Benton case, from statements made by the auditor of the company, that the line running through Benton was being operated at a loss. The same fact appears with reference to the line between Shawneetown and McLeansboro, from the statement produced by Superintendent Dickson, and sworn to by him as a correct summary of what appears from the books of the auditor. In the Benton case, it appeared that the line operated under the name of the "Cairo Short Line," as a whole, earned money over and above expenses. Attorney General Hunt, in his opinion, discussing the question whether the surplus revenues from other lines furnished a legal basis for compelling the company to operate additional trains on the Eldorado division, which was losing money upon the train already in use, says:

"I have given this matter much consideration, have found no case which sustains that position, and have serious doubts whether such liability can be forced. The sworn report of the auditor of the company, submitted with the company's answer, and not controverted, shows that in the five years—1884 to 1888, inclusive—the total loss in operating the Belleville & Eldorado line was \$44,810.64. With this exhibit, and on the statement of facts on which the complaint in this case is based, I do not believe that a court would, in a proceeding in the nature of *quo warranto*, hold the company liable or forfeit its franchise for refusing to increase its losses in operating the line."

The opinion of the Attorney General on this point is strongly supported by the case of the Fitchburg R. R. Co. vs. Commonwealth, 12 Gray, 180, and was doubtless examined by him upon this point, though it is not cited in his opinion.

We note what you say about the unfairness of considering the line from McLeansboro to Shawneetown as merely a branch, and not as part and parcel of the entire line known as the Southeast & St. Louis, and also your criticism of the manner in which the statement of the company is made up, and we might incline to take your view of these matters—at least so far as to order an expert examination of the books of the company for the purpose of getting a corrected statement of earnings and expenses—were it not for the fact that there seems to be an insuperable legal obstacle in the way of an action in this case, independently of the question whether the line makes or loses money. That obstacle is found in the very imperfect state of the remedial law upon the subject of compelling train service by a general writ in the name of the people. In our report for the year 1889, page 16, you will find the views of the railroad commissioners of this State fully expressed on this subject. In that report we urged the necessity of further legislation to meet such cases as that embraced in the petition of the citizens of Shawneetown.

The Attorney General in his opinion upon the Benton case, to which reference has been made, held that a writ of *mandamus* would not lie to compel additional train service upon a railroad. His opinion was professedly based upon the case of O. & M. Ry. Co. vs. The People, 120 Ill., page 200. The learned justice delivering the opinion in that case used the following language:

"It is believed no case can be found, which, in the absence of a statutory requirement, has gone to the length of holding that a railway company may be compelled by *mandamus* to increase the number of trains on its road, or to run daily a particular number of trains over its road; and we are satisfied there is no common law authority for making such an order."

If this be sound law (and it certainly is the law in Illinois until reversed), then it would seem that there is no means by which the commissioners could act in the direction of affording the relief prayed. To proceed to forfeit the franchise of the road by a writ of *quo warranto*, might entirely cut off the train service of Shawneetown, and it is not perceived how such an action could possibly make the train service better. Orders of the railway commissioners, you are, of course, aware, have no binding force as judgments, but remain to be enforced through the process of the courts. Should we make an order in this case which the courts afford no remedy to enforce, the Act would be merely nugatory, and would afford your people no relief.

For the reasons given, the commissioners have not judged it prudent to make any order in the premises, and I am authorized to say that the views here expressed meet the approval of the commissioners, and may be regarded as our opinion upon the case as made.

One practice of the company shown by the evidence is in direct violation of the statute. It was shown that the company is accustomed to haul freight cars in its trains behind passenger coaches. Against this practice the statute denounces a penalty, which the company incurs whenever it hauls its freight cars in this manner.

It was also shown that the company is accustomed to distribute cars upon its main track, between stations, to be loaded, and that, on the return, the custom is to push such freight cars ahead of the locomotive until a siding is arrived at where they can be transferred to the rear. True, it appears that by this practice the company accommodates many of its patrons, particularly those who ship blocks and logs, thus saving them the trouble and expense of transporting their freight to distant side tracks, which, it is said, would render the business unprofitable. The commissioners can not, however, take note of these little conveniences which result from violations of the statute. Our duty is to enforce the law as we find it. You are therefore authorized by the commissioners, as State's attorney of Gallatin county, and as one of the legal advisers of the commission, made so by statute, to proceed to prosecute violations of the statute in the particulars last noted. You are upon the ground, and the facts are accessible to you. You will please advise us, however, of such prosecutions as you may institute for these violations of the statute.

Regretting that we can not afford relief of a more comprehensive character to your people, I remain, sir,

Very truly yours,

ISAAC N. PHILLIPS,
Chairman R. R. and W. Commission.

Adopted Jan. 3, 1893.

CITIZENS OF BENTON, ET AL,

V.

THE ST. LOUIS, ALTON & TERRE HAUTE R. R. Co.

Filed Nov. 22, 1893.

Hearing at Benton Jan. 9 and 10, 1894.

Appearances—For petitioners, Hon. C. H. Layman and D. R. Webb; for respondents, Hon. George W. Parker and F. M. Youngblood.

OPINION BY CANTRALL, *Chairman*.

This is a petition of the citizens of Benton, Eldorado, Galatia, Thompsonville, Christopher and Mulkeytown, stations on the Belleville and Eldorado Division of the St. Louis, Alton & Terre Haute Railroad, a line of railroad extending from DuQuoin in Perry county, to Eldorado, in Saline county, a distance of fifty miles.

The petition charges that the only train operated by the respondent on this division of its road is a "mixed train," consisting of coal, stock and freight cars, to which is attached two passenger coaches, leaving DuQuoin at 11:00 o'clock a. m. and arriving at Eldorado at 3:00 o'clock p. m., and is due at DuQuoin at 6:50 o'clock p. m. on its return. That Eldorado is the junction of the C., C., C. & St. L. and the Louisville and Nashville railroads.

That passengers desiring to go north on either of these roads are compelled to remain in Eldorado from sixteen to eighteen hours. That passengers from stations east of DuQuoin desiring to go to St. Louis, or any point on respondent's road west of DuQuoin, are compelled to remain in DuQuoin from 6:50 o'clock p. m. until 4:35 o'clock a. m. on the following morning. That this is the only train that runs east of Benton. That a train consisting of a baggage car and one passenger coach leaves DuQuoin for Benton at 10:10 o'clock p. m. on Sunday and Monday only, arriving at Benton at 11:00 o'clock p. m., where it remains until 3:45 o'clock the following morning. That the "mixed train" carries the United States mail. That it is not run on its schedule time, being frequently from twenty minutes to three hours late, and that by reason thereof the mails are delayed. That the present train service does not furnish the patrons of the road with necessary and adequate means of travel. That the population of Eldorado is 2,000; Galatia, 800; Thompsonville, 500; Raleigh, 500; Benton, 1,200; Christopher, 200; Mulkeytown, 200; DuQuoin, 5,000. That the population of Perry county is 17,529; Franklin county, 17,138; Saline county, 19,332.

Petitioners ask that the defendant be required to "operate its railroad as a continuous line from St. Louis, Mo., to Eldorado, Ill., so as to give to complainants, and to the public generally, a through daily passenger train thereon, making appropriate connections with other roads at St. Louis, DuQuoin and Eldorado.

The respondent avers in its answer to the petition:

That it ought not to be required to furnish greater train service than patrons of the road are willing or able to pay for.

That the business of the line will not justify additional train service.

That the board has no authority to require a service which the business will not compensate.

That the company is not financially able to incur an expenditure beyond the earning power of the road.

That to grant the prayer of the petition would antagonize both State and Federal Constitutions.

That it is operating this division at a loss.

The evidence in this case shows that the respondent, the St. Louis, Alton & Terre Haute Railroad Company, is operating as lessee a line of road known as the Belleville and Eldorado Railroad, running from DuQuoin, in Perry county, eastward through Benton to Eldorado, a distance of fifty miles; that this line connects at DuQuoin with the Belleville & Southern Illinois Railroad, also operated by said company as lessee, running from DuQuoin to Belleville, where it connects with the Belleville & Carondelet Railroad, also operated by the same company under a lease, and there it also connects with its proprietary line for St. Louis. That said company is also operating as lessee a line of railroad from Pinckneyville, a station on the Belleville & Southern Illinois Railroad, to Brooklyn, Ill., known as the Chicago, St. Louis & Paducah Railroad. That the entire length of lines owned and operated by the St. Louis, Alton & Terre Haute Railroad Company is 239.4 miles. That there are located on the line of respondent's road east of DuQuoin seven stations, with an average population of about 700.

That the population of DuQuoin is 5,000; Benton, 1,200, and Eldorado, 2,000. That the aggregate population of Perry, Franklin and Saline counties is 53,999. That DuQuoin is the junction of the Illinois Central Railroad, and the Belleville & Eldorado, and Belleville & Southern Illinois Railroads. That Eldorado is the junction of the Belleville & Eldorado, the Cairo Division of the C., C., C. & St. L. and the Shawneetown branch of the L. & N. Railroads. That the only train operated over the entire length of the B. & E. Division is a "mixed train" consisting of coal, stock and freight cars, to which is attached a combination car and passenger coach; that this train carries freight, express, baggage, stock, mail and passenger; that said train does not make any connections at Eldorado with either of the roads at that place; that it does not connect at DuQuoin with any of respondent's passenger trains for St. Louis. That this train makes a round trip from DuQuoin to Eldorado daily (except Sunday); that passengers living east of Benton and desiring to go to any point west of DuQuoin can not go beyond DuQuoin on said train, but are compelled to remain in DuQuoin over night and resume their journey the following morning. That a train consisting of a baggage car and one passenger coach leaves DuQuoin for Benton at 10:10 o'clock p. m. on Sunday and Monday only, arriving at Benton at 11:00 o'clock p. m., where it remains until 3:45 o'clock the following morning, when it leaves for St. Louis.

That the respondent company does not furnish sufficient passenger trains to accommodate the travel along the line of the Belleville & Eldorado Division of their road, and that by reason thereof the public is greatly inconvenienced, and are compelled to accept passage on a "mixed train" if they desire to travel on the line east of Benton.

That the respondent company, as a corporation, has the financial ability to furnish the additional passenger train asked for by petitioners.

That in their annual reports to the Railroad and Warehouse Commission the gross earnings of the respondent company from operation, less the operating expenses, show net earnings per mile of road owned and operated by them to be in—

1888	\$2,327 43
1889	1,853 53
1890	2,335 12
1891	2,411 00
1892	2,696 00
1893	2,776 00

It is true that the evidence of the auditor of respondent shows that estimating the earnings of the B. & E. division upon a strict mileage basis, and charging it with 4 per cent of the general expenses of the entire system in addition to all the expense they are able to locate on that division, there is a deficit for every year they have been operating the road, save one. In the opinion of the commission, the earnings of this division should not be confined to a strict mileage basis, but an "allowance" or "constructive" mileage should be given it, such as is just and equitable, and as is the custom among other railroad corporations operating branches in connections with their main stem or proprietary line. If this division is to be treated by respondent, in its sworn report to the commission, as a part of its system, then respondent must treat it as a part of its system where the rights of the public are affected. It can not be a part of the system of respondent for one purpose and a separate and independent line for another. If it shall bear part of the general expense of the whole system, this is equitable, this is just, both to the stockholders and to the public.

The duty a railroad corporation owes to the public is no longer a controverted question in Illinois, there is no uncertain sound in the expression of our Supreme Court on this subject. Many cases have been cited by counsel for petitioner and respondent, all of which we have examined with care, and quote from some of the leading cases which we deem in point.

"The primary consideration and principal object in the creation of railroad corporations, and in conferring upon them privileges not enjoyed by private citizens, was the accommodation of the public and the promotion of their interests. It was not merely to aggrandize and enrich the stockholders; the benefits to be derived by the stockholders are only incidental to accomplish the primary object. To accomplish these purposes the people in a large number of counties, cities, villages and townships have incurred debts, which, in the aggregate, amount to a vast sum, to subscribe for stock in railroads, or as donations, and to aid in

their construction. In many instances heavy taxes have been laid to meet the interest on their bonds issued to pay for such stock, and, in most cases, their stock has been wiped out of existence, and they have nothing to show for their immense liabilities thus incurred. Can it be insisted that the people have incurred these heavy liabilities, burdened themselves in many instances to the point of ruin, only for the benefit of private stockholders? On the contrary, all know such liberality in granting the aid thus afforded, and privileges thus conferred, was mainly to advance the public interest, and private interest merely as an incident."

P. & R. I. Ry. Co. v. C. V. M. & Co., 68 Ill., 489.

"The rights and privileges legally exercised by them are exclusive in their nature, and for that reason they should be held strictly to act within the powers granted. It will not do to say it is more convenient, more profitable, to the company to act in a particular manner. When these bodies accept their charters they are held to enter into a contract with the State to discharge all the duties imposed, and to exercise the rights and privileges conferred on them in the manner described. And they must be held to a performance of this contract in precisely the same manner as is required of individuals."

O. & M. Ry. Co. v. Dunbar, et al., 20 Ill., 626.

"By virtue of the power of eminent domain, railroads may take the lands of the citizen against his will, and can, if need be, demolish his house. Is it supposed these great powers were granted merely for the private gain of the corporators? On the contrary, we all know the companies were created for the public good. The object of the Legislature was to add to the means of travel and commerce. Railway charters not only give perpetual existence and great power, but they have been constantly recognized by the courts as contracts between the companies and the State, imposing reciprocal obligations."

C. & N. W. Ry. Co. v. The People, 56 Ill., 379.

They are, in consideration of the valuable privileges conferred upon them by the State, bound to respond by providing the most ample accommodations for the public, and by discharging every duty imposed upon them with fidelity and dispatch.

Ill. Cent. R. R. Co. v. Waters, 41 Ill., 379.

Numerous cases can be found both in the reports of our own and other supreme courts where the same doctrine has been repeatedly laid down. It is so well settled that it will not be denied.

While railroad companies have the right to appropriate a portion of their trains exclusively to carrying freight and to entirely exclude passengers from the same, by a parity of reasoning the public may compel a railroad company to furnish sufficient passenger trains, from which freight cars are excluded, to accommodate the travel.

C. & A. R. R. v. Randolph, 53 Ill., 510.

It is insisted by counsel for respondent that the case of *The People v. The O. & M. Ry. Co.*, 120 Ill., page 200, is conclusive of this case, and in connection with it we are also referred to the opinion of ex-Attorney General Hunt. We are quite familiar with both. The Attorney General's opinion is based upon the opinion in the *O. & M.* case,

therefore we need only refer to the latter. We have no fault to find with the opinion of the court upon the admitted facts in the case. The court, in passing upon the case, uses this language:

"It is believed, however, no case can be found which, in the absence of a statutory requirement, has gone to the length of holding that a railroad company may be compelled by mandamus to increase the number of trains on its road, and we are satisfied there is no common law authority for making such order."

By reference to the case of *State v. H. N. H. R. R. Co.*, 29th Connecticut, on page 538, it will be seen that the supreme court of Connecticut, in a proceeding by mandamus to compel the defendant company to run a passenger train to the terminus of their road, held, in awarding the writ of mandamus, "that the railroad company had no right to retain their franchise and refuse to discharge their corporate duty—that chartered companies are obliged fairly and fully to carry out the objects for which they are created, and that they can be compelled to do so by mandamus.

The case is approved by our own Supreme Court in the case of the *C. & N. W. Ry. Co. v. The People*, 56 Ill., page 384, and is therefore as much an authority in Illinois as the decision of our own Supreme Court; but we do not think the *O. & M.* case is an authority in this case, for the reason that the facts upon which the court based its opinion are admitted as true, while in the case before us they are not only not admitted but are controverted. In the *O. & M.* case the inability of the company to comply with the order of the court granting the writ of mandamus was admitted, while in the case before us the evidence shows conclusively that the respondent, as a corporation, is abundantly able to furnish ample and convenient train service on any part of its system; therefore the two cases are not parallel.

The power of the board to regulate train service, or to make an order granting the prayer of the petition herein, is denied by respondent, and in this connection we desire to call attention to section 163, R. S., Chapter 114, which provides:

"Said commissioners shall examine into the condition and management and all other matters concerning the business of railroads and warehouses in this State so far as the same pertains to the relation of such roads and warehouses to the public and to the accommodation and security of persons doing business therewith, and whether such railroad companies and warehouses, their officers, directors, managers, lessees, agents and employes comply with the laws of this State now in force or which shall hereafter be in force concerning them. And whenever it shall come to their knowledge, either upon complaint or otherwise, or they shall have reason to believe that any such law or laws have been or are being violated, they shall prosecute all corporations or persons guilty of such violation." * * *

While this statute has never received a construction of our Supreme Court, we are of the opinion that a fair construction of it will warrant the board, in a proper case, to make an order regulating train service; and that upon the failure, neglect or refusal of the railroad corporation.

to comply with such order, that the courts in the proper proceeding will compel the railroad company either to discharge the duty it owes the public, or forfeit its franchise.

It is not insisted by the board that it has any judicial functions or that it could, independent of the courts, enforce any order it may be pleased to make concerning this or any other matter in which it may have jurisdiction, but it is believed by the board that it has the power, in a proper case, to recommend to a railroad company that it shall discharge its duty to the public as required by law, and that upon its failure to do so, that the board may cause proper suit or suits to be instituted in the proper courts to compel it to do so.

The franchise granted a railroad corporation are public grants, and clothe the property constituting the railway with a public use. It gives it a semi-public character and subjects it to the regulation and control of the State in behalf of the public to the extent that its charges must not only be reasonable, but its management safe, convenient and ample for the accommodation of the public. When these objects are accomplished, the right of the State control ceases because the rights of the public are secured.

Therefore, believing as we do, from the evidence in this case, that the citizens living along the line of the Belleville and Eldorado division of respondent's line of railroad are not furnished with ample or convenient passenger trains to accommodate those who may desire to be transported over said division or any part thereof, and believing further that no case can be found requiring the public to travel on a freight or "mixed train," and being convinced from the evidence in the case that the respondent has the financial ability to operate a passenger train in addition to the present "mixed train" now being operated by it, over its entire line, and in doing so it will not only discharge the duty it owes to the public, but will, at the same time, increase the earning capacity of its road.

We therefore recommend to you, the St. Louis, Alton & Terre Haute Railroad Company, that you, without delay, caused to be placed and operated on the Belleville and Terre Haute division of your road, in addition to the "mixed train" now being operated by you on said line, a daily passenger train, suitable and sufficient to carry all passengers, with their necessary baggage, in comfort and security and at a reasonable speed, and that you operate your said railroad from East St. Louis as a continuous line, so that persons desiring to leave Eldorado and intermediate points in the morning of each day (Sunday excepted) may be able to go on said railroad to East St. Louis and return the same day.

This order the St. L., A. & T. H. R. R. Co. refused to comply with and the proceedings against the railroad company for a writ of mandamus were instituted to the October term of the Franklin County Circuit Court.

This trial resulted in the dismissal of the petition of the commission, and an appeal was then prosecuted to the Supreme Court of the State of Illinois to the Springfield division thereof, where the case is now pending and a decision almost daily expected.

See next case for decision of the Supreme Court.

THE PEOPLE

v.

ST. LOUIS, ALTON & TERRE HAUTE R. R. Co.

The Supreme Court at its January term, 1896, handed down its opinion reversing the judgment of the lower court, with instructions to the lower court to award the writ of mandamus—we give below the full text of the opinion.

This is a petition for writ of mandamus in its amended form, presented in the name of the People of the State of Illinois, at the relation of William S. Cantrell, a citizen and property owner of Benton, Franklin county, Illinois, as the patron of the defendant railroad company, the prayer of which petition is as follows:

“That a writ of mandamus be issued, delivered to the St. Louis, Alton & Terre Haute Railroad Company, commanding it to cause to be furnished, placed, run and operated on said railroad, extending from Eldorado to DuQuoin, a daily (Sundays excepted) passenger train, each way, suitable and sufficient to carry all passengers with their necessary baggage, in comfortable and reasonable security, and at a reasonable speed, and to operate said line of railroad from East St. Louis to Eldorado as a continuous line, and that upon final hearing hereof, such further order be made in the premises as to the court shall seem meet and proper.”

The petition was answered by the respondent railroad company; a replication was filed to the answer, except as to one paragraph thereof which was demurred to, and the demurrer sustained; a jury waived, and the cause was submitted by agreement for trial before the circuit judge without a jury; the trial judge rendered judgment refusing the prayer of the petition, and dismissing the same, from which judgment the present appeal is prosecuted.

A large amount of testimony, oral and documentary, was introduced upon the hearing, including reports of the respondent company to the Railroad and Warehouse Commissioners; the charter of the Belleville & Eldorado Railroad Company, as found on pages 485, 486 and 487 of the private laws of 1861, and the lease executed by the Belleville & Eldorado Railroad Company to the respondent in 1880.

The petition avers that the railroad of the B. & E. R. R. Co. is the only railroad in Franklin county, and also contains the following averments:

“That on or about December 1, 1883, numerous citizens of said towns of Benton, Eldorado, Christopher, Mulkeytown, Thompsonville and other towns along said line of railroad, presented petitions to the said Railroad and Warehouse Commissioners of the State of Illinois, complaining of the train service on said railroad extending from Eldorado to DuQuoin, and setting forth the alleged facts relating thereto, and asking said commission to take cognizance of their complaint, and by appropriate

order or orders, or by appropriate suit or suits, compel the said St. Louis, Alton & Terre Haute Railroad Company to run its trains through from St. Louis to Eldorado as one continuous line, and run a daily through passenger train, with appropriate connections with other trains at DuQuoin and Eldorado, and give the public such further relief in the way of train service on said railroad as justice and right demand.

"That thereupon said commission gave notice to said railroad company of the presentation of said petition, and such action was thereupon afterwards taken and had by such commission, that on January 9 and 10, 1894, a hearing was had at Benton on said petition, at which time and place said railroad company was present and represented by its president, Hon. George W. Parker, and its counsel, F. M. Youngblood, and said petitioners were represented by Hons. C. H. Layman and D. R. Webb, and thereupon, after hearing and considering the evidence introduced by the petitioners and said company, the said commission made and promulgated the following order or recommendation in the premises, to-wit:

"We therefore recommend to you, the St. Louis, Alton & Terre Haute Railroad Company, that you, without delay, cause to be placed and operated on the Belleville & Eldorado Division of your road, in addition to the mixed train now being operated by you on said line, a daily passenger train, suitable and sufficient to carry all passengers with their necessary baggage, in comfort and security, and at a reasonable speed, and that you operate your said railroad from East St. Louis to Eldorado as a continuous line, so that persons desiring to leave Eldorado and intermediate points in the morning of each day (Sundays excepted) may be able to go on said railroad to East St. Louis and return the same day."

"That said St. Louis, Alton & Terre Haute Railroad Company has wholly neglected to comply with said order, or follow said recommendation, but, on the contrary, refuses to comply therewith, and yet continues to run its said train as before, and still fails to accommodate the traveling public."

Such other facts, set up in the pleadings and developed by the proofs, as are necessary to an understanding of the question involved are sufficiently stated in the opinion:

MAGRUDER J.: The main question in this case is, whether a railroad company can be compelled by mandamus to run a passenger train. The appellee operates about fifty miles of railroad running from DuQuoin easterly to Eldorado, which it leased in 1880 for 985 years from the Belleville & Eldorado Railroad Company; and it is conceded that it runs no passenger train—that is, no train for passenger service, exclusively—over this distance of fifty miles between DuQuoin and Eldorado. On Sunday and Monday evenings a train, consisting of a baggage car and one passenger coach, runs from DuQuoin easterly to Benton, about eighteen miles, returning from Benton to DuQuoin the next morning about 4:00 o'clock, but the only train which runs the whole length of the branch road between DuQuoin and Eldorado is what is called a mixed train, consisting of coal, stock and freight cars, to which are attached a combination car and a passenger coach. This mixed train

leaves DuQuoin daily at 11:00 o'clock a. m. for Eldorado, and returning in the afternoon, arrives at DuQuoin at 7:10 p. m. Appellee runs through trains from St. Louis by way of Belleville to DuQuoin; but the mixed train in question does not connect at DuQuoin with any of the passenger trains run by appellee from DuQuoin to St. Louis, nor at Eldorado with any of the trains upon the Cairo Division of the C., C., C. & St. L. Railroad, or the Shawneetown branch of the Louisville & Nashville Railroad. Passengers for St. Louis or points west of DuQuoin must remain over night at DuQuoin and take the train next morning at 4:50 o'clock.

The mixed train carries freight, express, baggage, stock, mail and passengers; on account of the freight carried and handled, it is a slow train, being often behind its schedule time from twenty minutes to three hours; during the busy season it often has to be cut in two on the grades, one part going forward to a switch, and returning for the balance of the train, including the passenger coach; at Eldorado, the entire train is often pushed in front of the engine down to the depot; when the mixed train goes east, the passenger coach, which is used by all classes of passengers, both ladies and gentlemen, is between the freight cars and the combination coach; the mixed train has two brakemen, is operated by hand brakes, and has no air brakes; the regular passenger trains on the other parts of the road are equipped with air brakes operated from the engine; and the road bed is dirt ballast, and the passenger car on the mixed train is dirtier and dustier than the passenger cars on the west end of the road; there is often an odor from the stock cars ahead of the passenger coach; it is bad for ladies and children; the stock cars are frequently filthy and offensive from the manure in them; the train is often delayed at the station to take on and deliver freight; it is subject to jars that stagger the passengers; much switching is done, and, when switching is done at a station, the passenger coach is usually uncoupled; and passengers must wait while the cars are loaded with stock, cattle and hogs, and are often inconvenienced by the gang planks thrown out.

The country through which the mixed train passes is a farming country and well settled. The products shipped are mostly grain, mill products and live stock, and the freight distributed along the line is merchandise. St. Louis seems to be the commercial center for that part of the State. Of the counties through which the mixed train runs Franklin county has a population of 17,138, Perry county 17,250, Saline county 19,342; and of the towns along the road, DuQuoin has a population of about 5,000, Benton 1,200, Eldorado 2,000, Galatia 800, Thompsonville 500, Raleigh 500, Christopher 200, Mulkeytown 200. Improved lands in that section are worth from \$20.00 to \$50.00 per acre.

Such being the character of the mixed train, and such being the population and character of the territory through which the mixed trains runs, ought the appellee be required to furnish the people with a passenger train? The question is not whether appellee should run more than one train, but the question is, whether it does all that it is required to do when it runs a passenger coach attached to a freight

train, or whether it is its duty to run one or more passenger coaches, separate and disconnected from freight cars, for the accommodation of passengers only and not of passengers in connection with shippers.

When it is sought by *mandamus* to compel a railroad company to do any act in relation to the equipment and operation of its road, the courts, as a general rule, will not interfere with its management of its railway in these respects, except where the act sought to be enforced is specific, and the right to its performance in the manner proposed is clear and undoubted. (The People ex rel. v. C. & A. R. R. Co., 130 Ill., 175.) Whether or not the People are here entitled to relief by *mandamus* against the appellee company must be determined by the answer to the inquiry, whether the act sought to be enforced is specific, and whether the right to a performance of that act is clear and undoubted.

There can be no doubt about the clear legal duty of the appellee to operate the railroad from DuQuoin to Eldorado, leased by it from the Belleville & Eldorado Railroad Company. The act of February 12, 1855, to enable railroad companies to enter into corporate contracts, and to borrow money, authorized railroad companies organized under the laws of Illinois to make contracts and arrangements with each other, and with railroad corporations of other states, for leasing or running their roads, or any parts thereof. (Starr & Curtis, Stat. p. 1921.) In case of a lease by one railroad company to another, the lessee assumes the rights, franchises and obligations contained in the charter of the lessor, and must conform to the requirement of said charter. (1 Rorer on Railroads, p. 610; 19 Am. & Eng. Enc. of Law, p. 897.) "And when one company leases its road to another, the lessee must, in operating it, be governed by the charter of the lessor." (City of Chicago v. Evans, 24 Ill., 52.) When, therefore, the appellee leased the road in question from the B. & E. R. R. Company, it assumed the charter obligations of the latter company, and agreed to conform to its charter requirements. Section 1 of the act to incorporate the B. & E. R. R. Co., in force February 22, 1861, declares, that the company shall possess all the powers * * * necessary to carry into effect the objects and purposes of this act, which is to lay out, build, construct, equip, complete and continue in operation a railroad from Belleville in St. Clair county by way of Benton in Franklin county, and Galatia and Raleigh and to Eldorado in Saline county; * * * and they may make connections with any railroad on the line, or at either terminus, on such terms as may be mutually agreed upon between the parties." (Priv. Laws of Ill. of 1861, p. 485.) Section 4 of the act provides that "said company shall have power, when in their discretion, they have a sufficient amount of capital stock subscribed, to proceed to lay out, locate, construct, build, equip, complete and operate their road." (Idam., p. 486.)

It will be noticed that the charter of the B. & E. R. R. Co. provides for the construction, equipment and operation of a railroad "from Belleville in St. Clair county by way of Benton in Franklin county and Galatia and Raleigh and to Eldorado in Saline county." As a matter of fact, however, the B. & E. R. R. Co. never constructed a road from

Belleville to Eldorado. It constructed a road about 50 miles long from Eldorado to DuQuoin in Perry county, the latter place being distant more than 56 miles from Belleville, and, as soon as the road between DuQuoin and Eldorado was finished, and on July 1, 1880, it leased the latter road to appellee. At that time appellee owned and operated a railroad running from East St. Louis, opposite St. Louis, to Belleville, a distance of a little more than 14 miles, and, prior to that time had leased for a long term of years the railroad of the Belleville and Southern Illinois Railroad Company, running from Belleville to DuQuoin, and was then operating the entire line from East St. Louis to DuQuoin as one road, commonly known as the "Cairo Short Line."

The lease made on July 1, 1880, by the B. & E. R. R. Co. to appellee recites the ownership by appellee of the road from East St. Louis to Belleville, and its lease of the road from Belleville to DuQuoin, and its operation of the two as one line; and also recites the completion of the road from DuQuoin to Eldorado, and that it is deemed and considered for the mutual interest of the parties hereto (the B. & E. R. R. Co. and appellee) "that said roads" (the three roads) "should be placed under the same management and operated as one line; and to that end, the party to the second part" (appellee) "has agreed to lease from the party of the first part" (the B. & E. R. R. Co.) "its railroad from DuQuoin to Eldorado," etc. It thus appeared from the recitals of the lease of July 1, 1880, that the object of that lease was to so connect the road from DuQuoin to Eldorado with the roads from East St. Louis to Belleville and from Belleville to DuQuoin, as that the three roads could be operated as one line. And so, although the B. & E. R. R. Co. did not construct a road from Belleville to Eldorado as its charter provided, yet, by the connection thus made with the road leased by appellee which ran from Belleville to DuQuoin, it became a part of a continuous line from Belleville to Eldorado, the terminal points named in its charter.

As the B. & E. R. R. Co., the lessor company, was bound to equip and operate its road, the appellee the lessee company, was also bound to equip and operate the leased road. "Equipments as applied to railroads has been defined to be 'the necessary adjuncts of a railway, as cars, locomotives.'" (Rubey v. Mo. Coal & Mining Co., 21 Mo. App., 159; 6 Am. & Eng. Enc. of Law, p. 655, n. 1.) Section 12 of Article 11 of the Constitution says: "Railroads heretofore constructed, or that may hereafter be constructed, in this State are hereby declared public highways, and shall be free to all persons for the transportation of their persons and property thereon, under such regulations as may be prescribed by laws. (1 Starr & Cur. Stat., p. 163.) It follows that the obligation to equip, and operate, and continue in operation, the leased road involved the obligation to furnish and use cars and locomotives for the transportation of persons and property, that is to say, for the carriage of both persons and freight. Section 22 of the act of this State in relation to fencing and operating railroads, provides (2 Starr & Cur. Stat., p. 1940) that:

"Every railroad corporation in the State shall furnish, start and run cars for the transportation of such passengers and property as shall,

within a reasonable time previous thereto, be ready or be offered for transportation at the several stations on its railroads and at the junction of other railroads, and at such stopping places as may be established for receiving and discharging way passengers and freight." It is claimed however, in behalf of appellee, that while it is obliged to furnish cars for the carriage of passengers, yet it is not necessarily obliged to carry passengers upon a separate passenger train; and that it has the right to exercise its own discretion as to the manner of their transportation. The discretionary power of railroad companies in this respect is subject always to the condition, that there is no statutory provision limiting and restricting such power, and that its exercise is not opposed to the terms of the charter. (*The People ex rel. v. C. & A. R. R. Co.*, 130 Ill., 175; *M. & O. L. R. R. Co. v. People*, 13 Ill, 559; 2 *Morawetz on Corp.*, 2d ed., Sec. 1118.)

This discretion is also subject to the condition, that it must be exercised in good faith and with a due regard to the necessities and convenience of the public. (*The People ex rel. v. C. & A. R. R. Co.*, *supra*.)

Counsel for appellant rely upon articles 1 and 6 of the lease of July 1, 1880. Article 1 is as follows:

"The party of the second part shall have, possess and operate the said railroad from DuQuoin to Eldorado for and during the term hereinbefore mentioned upon the terms and conditions herein set forth, and shall, at all times during the continuance of this lease, furnish all necessary rolling stock and equipment for the complete and perfect operation of the said demised railroad." And in the sixth article, the defendant company covenants as follows: "The said party of the second part shall and will, during the term hereby granted, operate; maintain and keep in good repair the railroad and premises hereby demised and shall from time to time make all necessary additions and improvements and shall and will indemnify and save harmless the said party of the first part, its successors and assigns, from and against all costs, charges and expenses, damages and liabilities whatsoever growing out of the maintaining, repairing, operating, or using of the said road." Thus, by the terms of the agreement made for the connection of the road of the B. & E. R. R. Co. with the roads of appellee, appellee was to operate the three roads from East St. Louis to Eldorado as one road, and to "furnish all necessary rolling stock and equipment for the complete and perfect operation" of the road from DuQuoin to Eldorado.

But, independently of the provisions of the lease, which was a contract between the lessor and lessee companies, the right of the people to insist upon the running of a separate passenger train is implied from the charter obligation to equip and operate the road.

Inasmuch as a railroad company is bound to carry both passengers and freight, the obligation of the appellee required it to furnish all necessary rolling stock and equipment for the suitable and proper operation of the railroad as a carrier of passengers no less than as a carrier of freight. It can not be said that the carriage of passengers in a car attached to a freight train is a suitable and proper operation of a railroad so far as the carriage of passengers is concerned. The transporta-

tion of passengers on a freight train or on a mixed train is subordinate to the transportation of freight, a mere incident to the business of carrying freight. To furnish such cars as are necessary for the suitable and proper carriage of passengers involves the necessity of adopting that mode of carrying passengers which is best adapted to secure their safety and convenience. This can be accomplished better by operating a separate passenger train than by operating a mixed train. That is to say, the duty of furnishing all necessary rolling stock and equipment for the suitable and proper operation of a railroad carrying passengers involves and implies the duty of furnishing a train which shall be run for the purpose of transporting passengers only, and not freight and passengers together.

Railroad corporations engaged in the transportation of passengers for hire or reward are bound to the exercise of the highest degree of care and diligence in the conduct of their business. "Their duties and liabilities in this respect extend as well to the appliances used as to the manner of using them. (2 Rorer on Railroads, pp. 948, 949.) But there are necessary differences between passenger and freight trains. (2 Wood on Railroads, p. 1288.) These differences need not be here noticed, but are well understood and easily recognized.

Railroad companies are not required to adopt on freight or mixed trains all the appliances which they use on passenger trains, but they are merely required to use the highest degree of care consistent with the practical operation of such trains. (*Oviatt v. Dakota Cent. R. Co.*, 43 Minn., 300; 44 Am. & Eng. R. R. Co.'s, 311.) When passengers are carried on freight or mixed trains, the care required by the company, so far as such appliances are concerned, is such as the nature of the train permits. (2 Wood on Railroads, p. 1288.)

And when a passenger rides on a freight or mixed train, he takes upon himself the increased risk and lessened comfort which is incident thereto; nor has he the legal right to demand any other care in the management of such a train than is requisite for that kind of a train, or any other security than such a mode of conveyance affords. (2 Rorer on Railroads, p. 947; *C. & C. U. R. R. Co. v. Fay*, 16 Ill., 568; *C., B. & Q. R. R. Co. v. Hazzard*, *supra*.)

It follows, that when the only train operated by a railroad company is a mixed train, passengers, being unable to ride upon any other kind of train, are forced to incur risk and submit to inconvenience, which do not exist on a separate passenger train. Hence, the operation of a railroad with a mixed train only is inconsistent with the duty of furnishing such cars and locomotive as are necessary to the suitable and proper operation of the railroad when engaged in the passenger traffic. We are not unmindful of the fact that, within certain limits, a discretion may be exercised as to what rolling stock and equipment are necessary for the suitable and perfect operation of a railroad carrying passengers. Where the mode of carrying passengers is separate from the mode of carrying freight, the legitimate exercise of discretion may begin. What we hold is, that there can not be a suitable and proper operation of the railroad as a carrier of passengers where the car in which it carries its passengers

is part of a freight train, because freight trains are inferior to passenger trains, and travel in them attended with less comfort, convenience and safety than travel in passenger trains. The inferiority of a freight train to a passenger train as a mode of carrying passengers is so obvious that no man of ordinary understanding would regard the use of a freight train for the purpose of hauling a passenger car as a suitable and proper operation of a railroad in the matter of transporting passengers.

We are, therefore, of the opinion that the act here sought to be enforced—the running of a passenger car or cars separately from freight cars—is sufficiently specific to be enforced by mandamus, and the right to compel its performance is clear and undoubted, unless such right is changed or modified by the decision of the question, whether the expense of running such passenger car or train would be justified by the amount of business over the particular line or road running from DuQuoin to Eldorado. Counsel for appellee insists that a railroad company is not bound to provide a separate passenger train when its business is not sufficient to warrant it in doing so.

In *O. & M. Ry. Co. v. The People*, ex rel., 120 Ill., 200, where the lower court awarded a mandamus upon a petition to compel a railroad company to repair and improve generally a certain portion of its road, and to increase the trains thereon, we reversed the judgment, and held that the writ was improperly issued, upon the grounds that the business of the road did not pay the current expenses, that the defendant was unable to perform the acts sought to be enforced, and that the requirement made upon the defendant was too general, and involved too much discretion as to details; but it was there said, that a railroad company could be compelled by mandamus to perform any specific duty it owed to the public as owner or operator of its road, such as operating its road as a continuous line and running daily trains; and the following language was used: "It is believed, however, no cause can be found which, in the absence of a statutory requirement, has gone to the length of holding that a railway company may be compelled by mandamus to increase the number of trains on its road, or to run daily a particular number of trains over its road; and we are satisfied there is no common law authority for making such an order. Of course, where the charter of the company expressly requires that no less than a given number of trains shall be run daily, the company may be compelled by mandamus to perform this, like any other specific duty enjoyed by its charter, or by other statutory provision. * * * A company that runs a daily passenger train each way over a road which can not, with proper management, be made to keep up repairs and pay running expenses, certainly does as much as the law requires of it, so far as passenger trains are concerned."

There are several marked differences between the *O. & M. Ry. Co.* case and the case at bar. Here the appellee does not run a daily passenger train from DuQuoin to Eldorado. Here the charter enjoins a duty which cannot be regarded as otherwise than specific in view of the considerations already presented. Here it can not be said that the appellee is financially unable to discharge the duty imposed upon it by

the law, and which it owes to the public. The learned circuit judge before whom this case was tried below says, in his decision of it, that "the defendant railway company is solvent and in a prosperous condition, its net earnings last year being over \$600,000.00, a net income of about \$3,000.00 per mile of road." After a careful examination we are satisfied that the statement thus made is sustained by the evidence.

When, however, it is said that "the defendant railroad company" has a net yearly income of \$600,000.00, the reference is to the defendant railroad company, of its branches or leased roads, as well as the main stem. So far as appears from this record, the main road, owned by appellee and operated under its own charter, is the short line running from St. Louis to Belleville; but besides the leased roads running from Belleville to DuQuoin and DuQuoin to Eldorado, appellee also operates three other roads leased by it for a long term of years, to-wit: The Belleville & Carondelet Railroad, a short road, about seventeen miles long, running west from Belleville to East Carondelet, on the Mississippi river; the St. Louis Southern Railroad, about forty-six miles long, which taps the said leased road that runs from Belleville to DuQuoin, at Pinckneyville, about ten miles east or northeast of DuQuoin, and runs from Pinckneyville to Marion; and the Chicago, St. Louis & Paducah Railway, about fifty-two miles long, running from Marion to Brooklyn, on the Ohio river. The Belleville & Carondelet road was not leased by appellee until June 1, 1893, and, therefore, but little consideration can be given to it in making up the estimates of earnings and expenses as found in the record. The large net income referred to is based mainly upon the earnings of the other five roads already mentioned.

It is said that the earnings of the Belleville & Eldorado Railroad, running from DuQuoin to Eldorado, when that road is taken by itself and considered separately, are not sufficient to justify the expense of running a separate passenger train from DuQuoin to Eldorado. But why should this branch be considered separately and by itself? Appellee operates its main road and its leased branches as one system, and, as thus operated, the main road and its connections or branches yield the net yearly income of about \$600,000.00, already referred to. All the divisions, which are entirely within the boundaries of the State of Illinois, are mere feeders of the main road running from East St. Louis to Belleville, which is also in Illinois; and all the leased roads above mentioned, except that running from East Carondelet, are feeders of the road running from Belleville to DuQuoin. The latter road and the B. & E. R. R. are required by the charter of the B. & E. R. R. Co., and by the terms of its lease, to, or agreeable with, appellee, to be operated as one line, and such operation as one continuous line is merely the carrying out of the original intention of said charter, which provides for the operation of one continuous line from Belleville to Eldorado. It is no more proper to select the fifty miles from DuQuoin to Eldorado of this compact network of roads, all operated under one system, and all contributing to the support of each other, as being deficient in the profits necessary to justify a reasonably safe and convenient operation of pas-

senger traffic, than it would be to select any other portion of the line running from East St. Louis to DuQuoin, and charge that portion with being deficient in such profits.

If it be admitted that a railroad company is not bound to run a separate passenger train when its business is not sufficient to warrant it in doing so, we are confronted at this point with the question, whether this doctrine refers to the business done by the main road and other roads leased to it and connected with it, all of which are operated, or are required to be operated, as one line, or whether it can be made to refer to a small part of the continuous line or system which happens to run through a section of country where the freight is not so much, and the passengers are not so many, as in the case of some other part of the line. We are of the opinion that the whole business of the various parts operated as one line should be taken into consideration where the circumstances are such as revealed by this record.

The duty required of a railroad company in the matter of transporting passengers is the duty to meet and supply the public wants. Those wants are measured by the business actually done, or what it could be clearly shown would be done if increased facilities were granted. That there is here a public demand for passenger service is shown by the fact that a passenger car is attached to a freight train, and that passengers are invited to ride, and do ride, upon this mixed train. It is not contended that appellee is not abundantly able, out of the earnings realized by it from the system controlled by it, to pay the expenses of running a passenger car separately from freight cars over the B. & E. R. R., and thereby save the traveling public from the increased danger and inconvenience of taking passage on a freight train. Nor does it appear that such expense could not be easily met by the earnings of the line running from East St. Louis to Eldorado by way of DuQuoin. The following language, used by the Supreme Court of the United States in *St John v. Erie Ry.*, 22 Wall., 136, is applicable here:

"The business of the road was a unit. If it had been disintegrated, as proposed by complainant, we apprehend that it would have been found that the co-relation of the main stem and the branches were such, and that the expenses and charges incident to the entire business, and to those of the several parts, were so interwoven and blended that an accurate ascertainment of the net profit of the main line, and any of the auxiliaries taken separately from the rest, would have been impracticable. An ancillary road may be short and yield but little income, yet by reason of its reaching to coal fields, or from other local causes, its contributions to other roads of the series may be very large and profitable. Whether in this case the partial computations insisted upon could not have been made, the process was one upon which the company was neither bound nor had the right to enter."

The reports made by appellee to the Railroad and Warehouse Commissioners for the years 1891, 1892 and 1893 show that it has never kept a separate account of the actual earnings or expenditures of the road from DuQuoin to Eldorado; but has treated the line from East St.

Louis to Eldorado as one continuous line, making no difference in its accounts between the divisions from DuQuoin to Eldorado and any other portion of the road.

In estimating the liabilities of the B. & E. R. R. Co., certain indebtedness, which is in the nature of preferred stock, is charged up as a liability in the accounts produced to show that the obligations of appellee are such as to relieve it from the duty of operating the passenger train asked for. This is manifestly improper, because guaranteed or preferred stock is but a dividend and not a debt, and the holder of a certificate for such stock can have no action against the company as for a debt, but his right is to a dividend. (Taft, *Trustee v. H. P. & F. R. R. Co.*, 8 R. I., 310; *St. John v. Erie Ry. Co.*, *supra*; 1 Rorer on Railroads, p. 168.)

The object of incorporating railroad companies is to secure to the public increased facilities of transit from point to point and an improved mode of carrying persons and property. Their public character is apparent from the fact that they are clothed with the power of taking private property, through the exercise of the right of eminent domain. Prior to the adoption of the present constitution, municipal corporations were authorized to aid in the construction of railroads by subscriptions for their stock. As a matter of fact, Franklin county, through which the B. & E. R. R. passes, subscribed \$150,000 to its construction, of which indebtedness \$37,000 is still outstanding. Railroads are creatures of the law, and are entrusted with the exercise of these sovereign powers to promote the public interest, and are, therefore, bound to conduct their affairs in furtherance of the public objects of their creation. The interest of stockholders in their profits is secondary, and, in the main, subsidiary to the interest of the public. It is in view of their public character that the courts are authorized to determine and enforce the public duties enjoined upon them. The duties which they owe to the State and the general public can not be shirked or evaded. (I. Wood on R. R., p. 12; *R. R. Commissioners v. P. & O. C. R. R. Co.*, 65 Mo., 269.)

We do not think that there is here such insufficiency of business or profits as to present valid defense to the application of the people. The writ of *mandamus* should issue as prayed for.

The judgment of the circuit court is reversed, and the cause is remanded to that court with directions to enter a judgment awarding the writ in accordance with the prayer of the petition.

Reversed and remanded with directions.

F. H. ROBERTSON

V.

CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY CO.

Appearances—For petitioner, Mr. J. W. Rausch; for respondent, Mr. George B. Gillespie.

The complaint in this case, which is accompanied by a petition signed by more than three hundred residents of the villages along the line of the road, is based upon the fact that the respondent does not operate any passenger trains upon the so-called Kankakee and Seneca branch of its road.

The facts appear to be as follows: The Kankakee and Seneca Railway Company is a corporation duly organized under the general laws of this State and owns a line of railroad 42.5 miles in length, extending from Kankakee, Illinois, to Seneca, Illinois. The capital stock of this company is \$10,000.00, one-half of which is owned by the respondent and the other half is owned by the Chicago, Rock Island and Pacific Railroad Company. By an arrangement between the Rock Island Company and the respondent, the exact terms of which do not appear from the evidence, the respondent is now, and for a number of years last past has been, operating the road. A passenger train was operated over the line for a time, but was discontinued some ten or twelve years ago, since which time only freight or mixed trains have been operated.

Of the cities and villages through which the road runs, Kankakee has a population of 20,000 or more; Bonfield, 250; Essex, 500; South Wilmington, 4,000; Gardner, 1,500; Mazon, 800; Wauponsee, 150; Lanham, 50; Seneca, 1,350, and the country through which it passes is a well settled farming country. The time-card offered in evidence shows that four third-class trains are at the present time run over the road daily, Sundays excepted. Train No. 237 is scheduled to leave Kankakee at 6:45 a. m. and is due at Seneca at 10:45 a. m., the scheduled rate of speed being about ten and one-half miles per hour. Returning this train leaves Seneca as No. 234, at 10:01 p. m. and is due to arrive at Kankakee at 3:50 p. m., the scheduled rate of speed being about eleven miles per hour. Train No. 216 leaves Seneca at 7:15 a. m. and is due to arrive at Kankakee at 10:00 a. m. Returning this train leaves Kankakee as No. 215 at 4:05 p. m. and is due to arrive at Seneca at 6:45 p. m., the scheduled running time of the last two trains being about sixteen miles per hour.

Each of these trains carry freight, express, baggage, mail and passengers, and for the accommodation of passengers a combination car and passenger coach are attached to each train. The Kankakee and Seneca Railway connects with the Chicago, Rock Island and Pacific Railway Company at Seneca; crosses the main line of the Atchison, Topeka and Santa Fé Railroad Company at Mazon; the main line of the Chicago and Alton Railroad Company at Gardner; the Elgin, Joliet and Eastern Railroad Company at Coster; the main line of the Wabash Railroad Company at Essex, and connects with the main line of the respondents' road, the Chicago, Indiana and Southern Railroad Company, and the Illinois Central Railroad Company at Kankakee. At each of these points there is an interchange of business with connecting lines, and as the switching at all intermediate points is performed by the regular train crews, the result is that these trains are very frequently behind time, and the service, so far as passengers are concerned, is very unsatisfactory.

The evidence on the part of the petitioner tends to show that the passenger coaches used on these trains are old and dirty, and neither comfortably heated nor adequately lighted; that the trains are frequently late, thus causing passengers to miss connections at connecting points, and because of this fact ninety-five per cent of the passengers from South Wilmington and Gardner and that immediate vicinity going to Morris, the county seat of Grundy county, take the Alton to Joliet and the Rock Island road from that point to Morris, traveling a distance of fifty miles rather than take the chances of missing the Rock Island connection at Seneca, although the distance is only about twenty-eight miles. The clerk of the Grundy county circuit court testified that it was the uniform practice to allow jurors and witnesses 100 miles mileage via Joliet, notwithstanding the fact that it was only a little more than half that distance via Seneca, and this, because of the uncertainty of the trains on the respondent's road.

Passengers from these points to Morris would naturally take respondent's train No. 237, which is due to arrive at Seneca at 10:45 a. m. A northbound train on the Rock Island is due at Seneca at 10:48 a. m., and should this connection be missed the next train on which passengers for Morris could take passage is due at Seneca at 4:54 p. m.

Respondent offered in evidence copies of the train sheets showing the time of arrival of the several trains operated on this branch covering a period of about 21 months. These train sheets show the following facts: Out of a total of 559 days train No. 216 arrived at Kankakee on time 455 times and was from 10 minutes to two hours and thirty minutes late 104 times; No. 234 arrived at Kankakee on time 496 times and was from 10 minutes to four hours late sixty-three times; No. 215 arrived at Seneca on time 486 times and was from 10 minutes to three hours late seventy-three times; No. 237 arrived at Seneca on time 492 times and was from 10 minutes to three hours and thirty minutes late sixty-seven times. The evidence on the part of the petitioner tended to show that at intermediate stations these trains were almost invariably late. This evidence is, however, not inconsistent with the train sheet records, because of the fact that the scheduled rate of speed is so slow that a train might be an hour late at Gardner and still arrive at the terminus on time.

But independently of the evidence on this point, it seems to us that the facilities furnished by the respondent are wholly inadequate to the needs of the communities through which this road runs, and this being so, is it not the legal duty of the respondent to operate a separate passenger train over this branch line?

We think the Supreme Court in the case of *The People ex rel. v. St. Louis, Alton and Terre Haute Railroad Company*, 176 Ill., 512, has answered this question in the affirmative. That was a petition for a writ of *mandamus* to compel the respondent to furnish, place, run and operate "on said railroad extending from Eldorado to DuQuoin a daily (Sundays excepted) passenger train, each way, suitable and sufficient to carry all passengers, with their necessary baggage, in comfortable and reasonable security, and at a reasonable speed, and to operate said line of railroad from East St. Louis to Eldorado as a continuous line.

* * *” The evidence in the case showed that the only train operated over the whole length of the branch was a mixed train consisting of coal, stock and freight cars, to which was attached a combination car and passenger coach; that it was a slow train, often being behind its schedule time from twenty minutes to three hours, and certain other facts not necessary to here state.

It was claimed in behalf of respondent that while it was obliged to furnish cars for the carriage of passengers, yet it was not necessarily obliged to carry passengers upon a separate passenger train, and that it had the right to exercise its own discretion as to the manner of their transportation.

The court said (p. 519):

“The question is not whether appellee should run more than one train, but the question, is, whether it does all that it is required to do when it runs a passenger coach attached to a freight train; or whether it is its duty to run one or more passenger coaches, separate and disconnected from freight cars, for the accommodation of passengers only and not of passengers in connection with shippers.”

After discussing certain questions in the case, the court said (p. 524):

“* * * the right of the people to insist upon the running of a separate passenger train is implied from the charter obligations to equip and operate the road. Inasmuch as a railroad company is bound to carry both passengers and freight the obligation of the appellee required it to furnish all necessary rolling stock and equipment for the suitable and proper operation of the railroad as a carrier of passengers, no less than as a carrier of freight. It can not be said that the carriage of passengers in a car attached to a freight train is a suitable and proper operation of a railroad, so far as the carriage of passengers is concerned. The transportation of passengers on a freight train, or on a mixed train, is subordinate to the transportation of freight, a mere incident to the business of carrying freight. To furnish such cars as are necessary for the suitable and proper carriage of passengers involves the necessity of adopting that mode of carrying passengers which is best adapted to secure their safety and convenience. This can be accomplished better by operating a separate passenger train than by operating a mixed train. That is to say, the duty of furnishing all necessary rolling stock and equipment for the suitable and proper operation of a railroad carrying passengers involves and implies the duty of furnishing a train which shall be run for the purpose of transporting passengers only, and not freight and passengers together.”

Again the court said (p. 526):

“It follows, that when the only train operated by a railroad company is a mixed train, passengers being unable to ride upon any other kind of train, are forced to incur risks and submit to inconveniences, which do not exist on a separate passenger train. Hence, the operation of a railroad with a mixed train only is inconsistent with the duty of furnishing such cars and locomotives as are necessary to the suitable and proper operation of the railroad when engaged in the passenger traffic. We are not unmindful of the fact that, within certain limits, a discretion may

be exercised as to what rolling stock and equipment are necessary for the suitable and proper operation of a railroad carrying passengers. When the mode of carrying passengers is separate from the mode of carrying freight the legitimate exercise of discretion may begin. What we hold is, that there can not be suitable and proper operation of the railroad as a carrier of passengers, when the car in which it carries its passengers is part of a freight train, because freight trains are inferior to passenger trains, and travel in them is attended with less comfort, convenience and safety than travel in passenger trains. The inferiority of a freight train to a passenger train as a mode of carrying passengers is so obvious that no man of ordinary understanding would regard the use of a freight train for the purpose of hauling a passenger car, as a suitable and proper operation of a railroad in the matter of transporting passengers."

If we correctly understand the holding of the court in this case it is then the legal duty of the respondent, under the circumstances disclosed by the evidence in the case under consideration, to operate at least one separate passenger train in each direction over its line daily, unless it is to be excused from this duty by certain facts which we will now consider.

It is contended by the respondent:

(1) That the Kankakee and Seneca Railway is operated by it, not in connection with its other lines, but as a separate and independent enterprise.

(2) That the revenue derived from the operation of this branch is not sufficient to pay the operating expenses of the road and its fixed charges, and

(3) That this commission has no power or jurisdiction to enter an order which will be binding upon the respondent.

It is perhaps true, as claimed, that a separate account is kept by the respondent showing the income and operating expenses of the Kankakee and Seneca branch, but the fact is also shown that the respondent owns one-half of the capital stock of the Kankakee and Seneca Railway, and by an arrangement with the owner of the other half of the stock, is now, and for many years past has been, operating the road. It connects with its main line at Kankakee, and we think we are justified by the evidence in holding that it is operated in connection with the main line and other branches of the respondent's railroad as one system.

Respondent offered in evidence a summary of its accounts for the year ending Dec. 31, 1906. From this it appears that the income of the road was sufficient to pay its operating expenses and leave net earnings amounting to \$1,622.55. Its fixed charges and taxes amounted to \$6,750.61, leaving a deficit after paying operating expenses, fixed charges and taxes of \$5,128.06. The summary of operation for the first nine months of the year 1907 is in substantial accord with the showing for the year 1906.

If the Kankakee and Seneca branch is to be considered separate and apart from the other lines operated by the respondent in the State of Illinois, we should hesitate to recommend to the respondent that it put on and operate passenger trains on this branch, but we see no reason why this branch should be considered separately and by itself. The respond-

ent operates its main road and branches, and the Kankakee and Seneca Railway as one system, and it appears from its report, which it is required to file with the Railroad and Warehouse Commission, that its gross earnings in the State of Illinois for the year ending June 30, 1907, exclusive of the Kankakee and Seneca Railway, were \$6,291,219.49, and that its net income from the operation per mile of road in the State of Illinois, after deducting the expenses of operation, was \$2,943.58.

The question here raised by the respondent was considered by the court in the case above cited, and it was said (p. 530) :

"If it be admitted that a railroad company is not bound to run a separate passenger train when its business is not sufficient to warrant it in doing so, we are confronted at this point with the question, whether this doctrine refers to the business done by the main road and other roads leased by it and connected with it, all of which are operated * * * as one line, of whether it can be made to refer to a small part of the continuous line or system which happens to run through a section of country, where the freight is not so much and the passengers are not so many as is the case on some other part of the line. We are of opinion that the whole business of the various parts operated as one line should be taken into consideration where the circumstances are such as are revealed by this record. The duty required of a railroad company in the matter of transporting passengers is the duty to meet and supply the public wants. These wants are measured by the business actually done, or what it could be clearly shown could be done if increased facilities were granted. That there is here a public demand for passenger service is shown by the fact that a passenger car is attached to a freight train, and that passengers are invited to ride and do ride upon this mixed train. It is not contended that appellee is not abundantly able out of the earnings realized by it, from the system controlled by it, to pay the expense of running a passenger car separately from freight cars over the Belleville and Eldorado Railroad and thereby save the traveling public from the increased danger and inconvenience of taking passage on a freight train."

Inasmuch as the Kankakee and Seneca line is operated by the respondent as a part of its system and its income from the system operated in this State is more than sufficient to enable it to pay the expense of operating a passenger train on this branch, without any appreciable effect upon the earnings of the whole line in the State considered as one system, the first and second contentions of respondent must be denied.

We quite agree with counsel for the respondent that this commission has no power to enter an order in this case and to enforce the same without the aid of the courts. The statute, however, requires this commission to examine into the condition and management and all other matters concerning the business of railroads in this State as far as the same pertains to the relation of such roads to the public and to the accommodation and security of persons doing business with such roads.

We therefore consider it our duty when called upon to examine into the merits of all complaints, such as the one filed in this case, and to make such recommendations to the railroad company complained against as may seem to be just and reasonable in the particular case.

We are of the opinion that it is the duty of the respondent in this case to furnish, run and operate a separate passenger train each way (Sundays excepted) over its railroad extending from Kankakee, Illinois, to Seneca, Illinois; that such train should be started from Kankakee at such an hour in the forenoon as will enable it to arrive at Seneca in time to make connection with the north bound train on the Chicago, Rock Island and Pacific Railroad, and that returning it should leave Seneca after the arrival of the southbound train on said Rock Island Railroad, which is due to arrive at Seneca at 3:18 p. m.

We therefore recommend that the respondent within thirty days of the date of this order caused to be placed and operated on this Kankakee and Seneca branch, in addition to the mixed trains now being operated by it on said line, a daily passenger train (Sundays excepted) suitable and sufficient to carry all passengers with their necessary baggage in comfort and security and at a reasonable speed; also that such arrangements be made by the company as will relieve train No. 216 and train No. 215 from doing switching at intermediate stations, so that passengers going each in the morning and desiring to return in the afternoon may have reasonable and fair accommodations on such trains.

Dated this 26th day of January, A. D. 1908.

W. H. BOYS, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

FRANK M. ANNIS

V.

ILLINOIS, IOWA AND MINNESOTA RAILWAY COMPANY.

Appearances—For petitioner, Frank M. Annis; for respondent, Henry C. Wood.

The petition in this case was filed for the purpose of compelling the respondent to furnish, run and operate a daily passenger train each way (Sundays excepted) on that part of its line between Aurora and Rockford.

It appears from the evidence offered at the hearing, and from the annual reports made by the respondent to this commission, that the respondent was organized under the general railroad incorporation act of this State on Dec. 9, 1902, for the purpose of building a railroad from Momence, Kankakee county, Ill., to East Dubuque, Jo Daviess county, Ill. Under its charter the respondent built and placed in operation during the year 1905 a line of railroad from Momence, Ill., to Joliet, Ill., thirty-six miles, and from Aurora, Ill., to Rockford, Ill., sixty-five miles, and secured trackage rights over the Elgin, Joliet and Eastern Railway between Joliet and Aurora. The entire length of the line from Momence to Rockford is 125 miles.

At the present time the respondent operates two mixed trains each way daily (Sundays excepted) between Momence and Aurora, and one mixed train each way (Sundays excepted) between Joliet and Rockford. The only accommodations provided for passengers is a caboose attached to each of these mixed trains. The running time of the two trains between Aurora and Rockford, as shown by the time-card offered in evidence, is only about twelve miles an hour. It is also a fact, not disputed by the respondent, that these two trains are nearly always from one to three or four hours late. Indeed, the evidence clearly shows that the accommodations provided by the respondent for the carriage of passengers between Aurora and Rockford are so inadequate, and the running of the trains so uncertain, that it may be fairly presumed that no person would patronize the road except in case of absolute necessity.

It is contended by the petitioner that the respondent does everything it can to discourage passenger travel over its road; that the line was built primarily for the carriage of freight, and that the officers of the company in carrying out the policy of the owners of the road to make it a freight line only, have purposely refrained from furnishing any reasonable or adequate facilities for the transportation of passengers.

On the other hand it is claimed by the respondent that shortly after the line was opened for business it operated one passenger train each way daily over its entire line for a period of two or three months, but the trains were so little patronized that the revenue derived therefrom was not sufficient to pay any considerable part of the expense of operating the trains and they were abandoned on that account.

Regardless of the attitude of the respondent on this question, it is clearly its duty under its charter to provide reasonable accommodations for the persons who desire to travel on its line of railroad. The laws of this State do not authorize the incorporation of a railroad company to do a freight business only, except, perhaps, where the road is built exclusively for the purpose of affording terminal facilities within, or in the vicinity of a city.

We think there is no doubt, that, as a general rule, it is the duty of all railroads organized under the laws of this State:

1. To engage in the carrying of passengers as well as freight; and,
2. To run passenger trains separate from freight trains for the accommodation of passengers.

It is however, contended by the defendant, that the revenue which would be derived from the operation of a passenger train each way daily (Sundays excepted) between Aurora and Rockford would not be sufficient to pay the expense of operating such trains, and that therefore, it should not be compelled to put on the trains.

We are convinced that the running of these trains would not be a source of profit to the railroad company, but that fact alone would not be considered by the courts, a sufficient reason, for refusing a writ of *mandamus* compelling their operation if the business of the company as a whole could be transacted with reasonable profit.

The sworn reports made by the respondent to this commission for the years ended June 30, 1906, and June 30, 1907, and which by agreement, are to be considered as evidence in the case, show the following facts:

For the year ended June 30, 1906, respondent's total passenger revenue was \$8,589.31; total freight revenue \$108,564.80; total gross earnings \$117,655.11. During the same period the total operating expenses, including taxes, were \$120,603.39, leaving a deficit for the year of \$2,948.28.

For the year ended June 30, 1907, the total passenger revenue was \$6,812.08; total freight revenue \$221,192.36; total gross earnings \$229,126.07. During the same year the operating expenses and taxes amounted to \$260,879.07, leaving a deficit of \$59,012.93.

It thus appears that the whole road is being operated at a loss, and the evidence convinces us that this deficit would be increased rather than diminished should the respondent be required to operate the passenger trains asked for by the petitioner.

While these facts alone would probably not be sufficient to relieve the respondent from the performance of any legal duty which it owes to the public, still they may, and probably would constitute a sufficient legal reason for refusing to issue a writ of *mandamus* directing the respondent to operate the trains in question.

The statute provides no method by which this commission may compel a railroad company to operate passenger or other trains; and the only means of compelling the performance of this duty is through the courts by a writ of *mandamus*. The commission may inquire into the facts concerning any alleged violation of law by a railroad company in this State, and institute, or cause to be instituted, such proceedings in the courts as may be deemed necessary, but this is the extent of the commission's power in this regard.

Under the facts in this case we think it very doubtful if the courts would sustain a petition for a writ of *mandamus*. The general rule is that a writ of *mandamus* will not be granted when it is clear that it will be unavailing, or, if for any reason it is not within the power of the defendant to comply although its inability is due to the want of necessary funds, or of the means of raising them. (Cyc., 362.)

There is nothing in the evidence tending to show the financial condition of the respondent further than the fact that the railroad has been operated at a considerable loss during the past two years, and in the absence of evidence to the contrary, this fact alone would tend to establish the fact of the financial inability of the respondent to comply with any order of court which would increase rather than diminish the present deficits.

Whether or not a proceeding in the nature of quo warranto would lie in this case, it seems to us, in the view we take of the matter, to be unnecessary to determine.

Aside, however, from the legal difficulties in the way of compelling the operation of the trains asked for by the petitioner, we are not convinced that any considerable public demand exists for these additional trains. Respondent's road between Aurora and Rockford passes through

but two towns of any considerable size, DeKalb, with a population of about 6,000 and Kirkland, with a population of about 650. DeKalb has a direct line to Chicago on which is operated nineteen passenger trains daily, and a direct line to Aurora on which is operated eleven passenger trains daily. Kirkland has a direct line to Chicago operating eleven passenger trains daily and a direct line to Rockford operating seven trains daily. None of the other stations on the part of respondent's line in question have a population of more than twenty-five, except New Milford, with a population of two hundred, which is located on a direct line to Aurora, Rockford and Chicago operating five passenger trains daily.

The operation of these additional trains would undoubtedly be an accommodation to petitioner who lives in Aurora and makes occasional trips to his farm at or near Troxel, and it may be that a comparatively few persons living in the vicinity of the several country stations on the line, would, to a limited extent, patronize the road, but inasmuch as respondent's whole line is being operated at a loss, and these additional trains would entail a further loss upon the company, and because such facts would probably be considered by the courts a sufficient reason for refusing a writ of *mandamus*, the prayer of the petitioner is denied.

If at any time in the future it can be shown with reasonable certainty that enough revenue would be derived from the operation of the trains asked for to pay the expenses of operating them, or if it can be shown that the business of the whole line is such as would make the whole business reasonably remunerative, notwithstanding the passenger trains are operated at a loss, we should not hesitate, upon proper application, to take the necessary steps to enforce their operation.

Dated this first day of April, A. D. 1908.

W. H. BOYS, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

INHABITANTS OF WOMAC, ILLINOIS

V.

CHICAGO AND ALTON RAILROAD COMPANY.

Appearances—For petitioners, Rinaker and Rinaker; for respondent, Patton and Patton.

Complaint is made in this case that the train service maintained by the respondent on its line between Carlinville and Barnett is insufficient, and the commission is asked to enter an order requiring the respondent to operate at least one daily train each way between the stations named.

The respondent owns and operates a branch line of road extending from Eldred, in Greene county, to Barnett, in Montgomery county. This branch line crosses the main line of the respondent at Carlinville. The distance from Carlinville, to Barnett (being that part of the branch

line about which complaint is here made) is approximately ten miles, and the town of Womac is located midway between Carlinville and Barnett. Prior to July 27, 1908, a daily train service each way was maintained between the stations last named, but on that day such service was discontinued and a tri-weekly service each way substituted therefor. During the months of June and July, 1908, the total revenue derived by the respondent from the operation of this line between Carlinville and Barnett was \$207.56, or an average of \$103.78 per month. These figures include the earnings at Womac, Church and Barnett, the only stations on the line here in question. Because of this showing the respondent claims that on this portion of the branch line the business does not justify it in maintaining a daily train service each way, but that a tri-weekly service each way affords reasonable accommodations to the public.

It is also claimed that the respondent is under no duty, statutory or otherwise, to operate daily trains over this branch, but that its only duty is to afford reasonable facilities for the transaction of such business as may be offered it.

Two questions are thus presented:

(1) Does the service, now maintained by the respondent, afford reasonable accommodations to the public, and if this question is decided in the affirmative,

(2) Is it the legal duty of the respondent to operate daily trains over this branch line regardless of the necessities of the public.

First—During the months of June and July, 1908, the respondent operated daily trains each way over this branch. The average monthly earnings amounted to \$103.76, or a daily average, (excluding Sundays) of about \$4.00 per day. The average earnings per train mile for both freight and passenger traffic amounted to only 20 cents. During the year ended June 30, 1906, the average freight and passenger earnings per train mile of all of the railroads in the State of Illinois, as shown by reports made to this commission (Report, 1907, pp. 188 to 195) amounted to \$3.74. These figures show, beyond any question, that this branch line is not a paying proposition, but on the contrary, that it is being operated, even when trains are run tri-weekly, at no inconsiderable loss. The fact that the line is not operated at a profit, would not, in and of itself, relieve the respondent from operating the line, because it is undoubtedly the clear legal duty of the respondent to operate this branch line even at a loss, unless the loss thus sustained would render the business of the entire system unprofitable, and there is no showing in this case that such would be the result.

However, it is entirely proper to take into consideration the amount of business done, in ascertaining whether or not the service maintained by the respondent affords reasonable facilities to the public. The town of Womac (which according to the census of 1900 has a population of 26) is the only station on this branch line which is not served by another railroad. Carlinville is located on the main line of respondent and Barnett is served by the C., B. & Q. railroad. We are unable to locate the town of Church, but inasmuch as the respondent derived no revenue from that station during the months of June and July, 1908, it must be a station of no importance.

All things considered, we are inclined to agree with the attorneys for respondent, that the service now maintained on this branch, in view of the very small amount of business that can be transacted, provides reasonable accommodations to the public.

Second—Is it the legal duty of a railroad company, organized under the general laws of this State to operate daily trains over its main line and branches regardless of the necessities of the public?

We have been unable to find anything in the statutes of this State making it the express duty of railroad companies to operate daily trains. On the contrary, sub-section 9 of section 20, chapter 114, empowers the board of directors "to regulate the time and manner in which passengers and property shall be transported" and the only express duty imposed with respect to running trains is by section 84 of chapter 114, where it is provided that "every railroad corporation in the State shall furnish, start and run cars for the transportation of such passengers and property as shall within a reasonable time previous thereto be ready or be offered for transportation, etc." The meaning of this latter section is not entirely clear. Does it mean that every railroad company shall start and run cars within a reasonable time after freight is delivered or offered to it for transportation, or does it mean that where freight is delivered or offered to a railroad company within a reasonable time prior to the time a train starts, it shall be transported or carried on such train?

If the latter construction is correct then the section does not in any way interfere with or limit the discretion vested in the board of directors "to regulate the time and manner in which passengers and property shall be transported." If the former construction is to obtain it is simply the equivalent of saying that it is the duty of each railroad company to operate trains with such frequency as to reasonably accommodate the public, and this is undoubtedly the duty of a railroad company without reference to this particular section of the statute. At any rate there is nothing in this section that expressly requires a railroad company to operate daily trains at all hazards or at any sacrifice regardless of the public wants and necessities.

So far as we have been able to find the two sections above referred to are the only ones that have any direct bearing on the question of the duty of railroad companies to operate daily trains.

It is, however, said that the principle on which the complainants are proceeding in this case is recognized in the cases of *The People v. C. & A. R. R. Co.*, 130 Ill., 175 and *L. & M. Ry. Co. v. The People*, 222 Ill., 242. We are unable to find anything in either of these cases justifying the conclusion that the court would hold as a matter of law, and without reference to existing facts, that it is the duty of the respondent to operate daily trains. Of course, if the charter of the respondent or the laws of this State specifically required it to operate daily trains, then such duty could be enforced by *mandamus*, as was held in the case of *In re Brunswick R. R. Co.*, 17 New Brunswick, (1 P. & B.), 667, cited in *O. & M. Ry. Co. v. The People*, 120 Ill., 200.

It is also true that under provisions of chapter 114 railroad companies are authorized to "operate" their respective roads, and to "start and run

cars for the transportation" of freight and passengers, and it may be added, whenever a power is granted by the Legislature to do an act, in the execution whereof the public has an interest, the power, if accepted, implies or creates an obligation, although granted by permissive words only.

It may therefore be said that it is the duty of the respondent to "operate" this branch line of road and to "start and run cars for the transportation" of freight and passengers, and that such duty is sufficiently specific to be enforced by *mandamus*.

But what would be considered operation? Can it be said that this branch line is not being operated by the respondent simply because trains are run tri-weekly instead of daily? A railroad company may lose its franchise by abandonment or non-user, but can it be said that a suit against the respondent to forfeit its franchise could be successfully maintained under the facts in this case? We have found no case which goes that far.

In cases of this character it has been the practice of the commission to investigate the facts and make such recommendations to the railroad companies as seem to be proper under all the circumstances. In the case under consideration we are of opinion that the service maintained by the respondent provides reasonable accommodation for the public, and unless it can be said as a matter of law, and without any reference to the facts, that it is the absolute duty of the respondent to operate daily trains, we feel that no recommendation should be made in this case. While the question last stated is not entirely free from doubt, we are, upon reflection, inclined to the view that no such duty exists under the laws of this State, and for this reason the prayer of the petitioners is denied.

Dated at Springfield, Illinois, this 22d day of September, A. D. 1908.

W. H. BOYS, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

JOHN A. MONTELIUS, ET AL

V.

TOLEDO, PEORIA AND WESTERN RY. CO.

Appearances—For petitioner, Hon. L. Y. Sherman; for respondent, Mr. W. H. Horton.

The complaint of John A. Montelius, et al filed herein on the 9th day of June, 1909, and other later dates, were all upon the hearing of the cause consolidated and heard as one complaint. The complaint states that the complainant is a resident of Piper City, Illinois, and that the defendant named is a common carrier actually engaged in the transportation of freight and passengers by railroad, and that the present passenger service of said defendant from Forest, Illinois, east to Effner

is insufficient; that it is impossible for the people of that vicinity to travel to Peoria and back from said city on the same day, and that some of the villages and contiguous territory along said line of railroad are entirely dependent on said railway company for passenger and freight service, and that two of the trains numbered three and two operated on said road should be run from Peoria through to the State line for the accommodation of the people along said line of railroad, and the purpose of the petition is to compel the defendant to furnish, run and operate trains from Peoria, Illinois, continuously to Effner, or the State line, in said State.

It appears from the testimony offered in the case that the defendant corporation operates a railway duly organized and chartered under the laws of the State of Illinois; that along said line of railway from Peoria to the State line are the cities of Washington, Eureka, El Paso, Chenoa, Forrest, Chatsworth, Piper City and some other small villages. It appears from the evidence that the length of the road between the points mentioned is 111 miles; that it is 65 miles from Peoria to Forrest and 46 miles from Forrest to the State line, and 12 miles from Forrest to Piper City, the home of the complainant. It further appears from the evidence that the defendant company operates two trains from Peoria east, one starting at 9:32 a. m. from Peoria and the other at 3:25 p. m. These two trains run from Peoria to the State line. Going west through Piper City there is a train to Peoria at 2:50 and one at 8:00 p. m. The train going east in the evening from Peoria stops at Forrest, and if there are passengers at that point on the train they are compelled to wait until the next day for a train. This is the source of complaint, the complainant insisting that the train east in the evening should stop at Forrest, but should be continued on through to the State line. It is claimed, and not denied, that there is no way of getting from Piper City by train to Peoria and return the same day. It appears from the evidence that prior to 1908 the trains referred to run through to the State line as desired by the complainant herein. It is claimed by the defendant that the reason said trains do not run through to the State line at present, is, first, that there is not sufficient number of passengers to justify the train going beyond Forrest; that financially they cannot afford to operate the train, and hence were compelled for that reason to stop it at Forrest. The further claim is made that they could not operate the train through from Peoria to the State line and return and keep within the sixteen hour law for passenger crews on trains, and that it would make a double expense if they undertook to do it. There is no particular dispute about the facts in this case. The evidence is somewhat vague as to the number of passengers or the total earnings of the entire road, the evidence only showing that the particular branch of the road from Forrest to the State line does not financially pay.

It is also agreed by counsel for the respective parties that it is not within the province or power of this commission to compel this or any railroad company to operate any particular number of trains and to any particular point at any particular time, and while that is true as stated

by the respective parties, it is the business of this commission to carefully investigate all complaints of this character and see that so far as it is within their power the railroad companies shall accommodate the traveling public. The question for the commission to determine is, whether under the facts as they appear in this case, if suit were brought in the proper court by the complainant, would that court upon the evidence heard before this commission, or before the court, issue a writ compelling the defendant to continue its trains from Forrest to the State line as heretofore.

The statute provides no method by which this commission may compel a railroad to run any particular number of trains. The only way to compel the performance of this duty is by proceedings in court. The commission can only inquire into the facts concerning an alleged violation of law by a railroad company upon this point in this State and institute, or cause to be instituted such proceedings in the courts as may be necessary, but this is the extent of the commission's power under our present law. The evidence in the case showing the financial condition of the railroad, the number of passengers carried over this particular line, and its earnings from the point where it stops to the desired destination is very vague and indefinite, and while that question alone would not justify the commission, yet it might if the full facts were before us, assist materially in the conclusion to be reached.

After a very careful consideration of the facts and circumstances in this case the commission thinks it very doubtful at least if the courts would sustain a petition for a writ of *mandamus*. The general rule is that a *mandamus* will not be granted when it is clear that it will be unavailing, or if for any reason it is not within the power of the defendant to comply, although its inability is due to the want of necessary funds or the means of raising them. The court would also take into consideration the service already rendered in this case, the inability to operate the trains with one crew, the additional expense attached, together with the service already furnished the people along the line of the road. Applying to the facts as they appear in this case, the decisions of the courts upon this question, it is the opinion of the commission that the courts would deny the writ. In the evidence, however, it is set up by the defendant, that they are desirous of accommodating the people in this particular locality, and it is manifest there is more or less inconvenience to the petitioner and many others, and that it would be desirable if a better service could be rendered along this particular line of the road. The commission suggests to the defendant that they undertake to so schedule their trains that persons from that vicinity would be able to get into and return from Peoria the same day. If this could be done it would seem to solve the problem, and it would seem that such service could be rendered without additional expense to the defendant.

Believing from the evidence before us that if proceedings in court were commenced that the court would deny the writ, the prayer of the petitioner will be denied. If, however, at any time in the future it can be shown with any reasonable certainty to this commission that sufficient revenue will be derived from the operation of the trains asked for, or if

it can be shown that the business of the whole line is such that it would make the business reasonably remunerative, we should not hesitate upon another application to take the necessary steps to bring about such service.

Dated at Springfield, Illinois, this 19th day of October, A. D. 1909.

ORVILLE F. BERRY, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

CITIZENS OF CHESTNUT

V.

ILLINOIS CENTRAL R. R. Co.

Appearances—Mr. J. F. Kretzinger, for the Citizens of Chestnut; Mr. John G. Drennan, for the I. C. R. R. Co.

The petition in this case asks the commission to require fast mail train No. 505 to make regular stops at this station. It is contended by the petitioners that not stopping such train at their village is a discrimination against them and in favor of other villages and towns on the line of the road, and that they need the service of this train. Under the law the citizens of this village are entitled to reasonable train service, everything considered. Chestnut is a small village of not to exceed 500 inhabitants and they are entitled under the law to reasonable railroad service.

The defendant insists they cannot stop this train, being an interstate mail train, and that they are required to make certain time which they could not make stopping at Chestnut and other small towns. The train in question passes Chestnut about 7:40 a. m. The defendant insists that it is not necessary for it to stop and the record shows that people from Chestnut can either take the local freight train to Mt. Pulaski and catch this train or take train No. 506 and go to Kenney and get No. 505. They also insist that the people of Chestnut are fully cared for by a train going through there, No. 501, arriving at Springfield at 10:45 in the morning, and another train about 4:00 o'clock in the afternoon, making three trains south from Chestnut, as claimed by the defendant, and the record shows the running of such trains.

Going north there is train No. 526, as shown by the record, about 6:30; train No. 584 at about 12:15, and train No. 502 in the afternoon at 4:30, making three passenger trains each day each way. In addition the record shows that No. 18 stops there at night to let off St. Louis passengers and pick up Chicago passengers, making four passenger trains each way each day, and in addition to that they have a local freight train that passes there about 12:00 or 1:00 o'clock, making five trains that carry passengers. The record also shows that this particular train will stop at this point for St. Louis passengers if proper request

is made for the same. It is insisted by the petitioners that this particular train stops at other places of no more importance than Chestnut. The defendant answers they are compelled to do so because of competitive conditions at this point.

We have examined the testimony in the case very carefully and in view of former decisions of this commission and applying the law of reasonable service to the facts in this case, the commission feel that the defendant company is furnishing reasonable passenger services to the citizens of Chestnut and therefore the prayer of the petition is denied.

Dated this 16th day of June, Springfield, Ill.

ORVILLE F. BERRY, *Chairman*;
B. A. ECKHART, *Commissioner*;
J. A. WILLOUGHBY, *Commissioner*.

PEOPLE OF THE VILLAGES OF HINCKLEY, WATERMAN AND SHABBONA

v.

C., B. & Q. R. R. Co.

Appearances—Hon. A. C. Cliffe, for the complainants; Mr. J. A. Connell and Mr. P. S. Hustis, for the respondent.

The complaint in this case was filed the 25th of January, 1910, on behalf of the citizens of Hinckley, Waterman and Shabbona asking for additional train service, and a hearing had before the commission in Chicago, March 10, 1910.

The main question at issue rests upon the fact that the railroad does not give a stop with their No. 49 which leaves Chicago at 10:15 p. m. and would pass these villages about midnight. This request was made to the railroad company and declined on the ground that they could not make their schedule time and make these stops, this train being a through and interstate mail train.

It was also insisted that the eastbound train should stop. The evidence shows that this eastbound train is a continental train, also mail and interstate, and run in strong competition with other lines in order to make the time. It appears from the testimony that there are possibly ten to fifteen other towns within the State of Illinois along the line of this road that also would desire to be served by this train, if possible. The evidence shows that these villages have eastbound trains in the morning at 6:35, 6:42 and 6:52, arriving in Chicago at 8:45. That they also have a morning train at 8:30, 8:40 and 8:51, arriving at Chicago at 10:45. They have an afternoon train at 6:10 and 6:23, arriving at Chicago at 8:45. In addition there is some way freights; the evidence does not very clearly indicate the time.

Westbound the evidence shows there is a train leaving Chicago at 8:30, arriving at these points between 10:00 and 11:00 o'clock. The next train westbound out of Chicago at 2:20 in the afternoon, arriving at

these points about 4:30 to 5:00 o'clock. There is also a passenger train, No. 41, leaving Chicago at 4:30 p. m., and arriving at these points between 6:00 and 7:00. In addition to that there is an early morning train, the evidence shows, from Aurora at 6:15 that gets to these points about 8:00 o'clock.

While the evidence shows that even with this amount of trains there is some inconvenience at these points, taking the testimony altogether it would appear that greater inconvenience would probably arise if this particular train in question was required to stop at these particular places.

Without determining at this time the question as to interstate trains the commission have very grave doubts in their mind whether or not they could make an order that would be binding upon this interstate mail train. At least they would not be justified in doing so unless it appeared to be almost absolute necessity to furnish these particular localities with reasonable services. The demand today is for the very highest grade of service. We want that for our own convenience and are entitled to the best service possible, yet in determining all these matters the question of fast through trains becomes very important.

We have suggested to the railroad that the train that leaves Chicago in the evening might leave a little later, as it ends at Savana, as shown by the testimony, and have urged them to make this further accommodation for the petitioners, but having given the evidence introduced by the respective parties very careful consideration the commission are of the opinion that the prayer of the petitioners, for the reasons indicated, will have to be denied.

Dated at Springfield, Ill., this 16th day of June, 1910.

ORVILLE F. BERRY, *Chairman*;
B. A. ECKHART, *Commissioner*;
J. A. WILLOUGHBY, *Commissioner*.

CITIZENS OF MAQUON

v.

CHICAGO, BURLINGTON & QUINCY R. R. Co.

Petition to have evening passenger train stop at Maquon, Ill. This is an application for additional train service at Maquon. One of the most difficult tasks the commission have to perform is to satisfy every community in the matter of train service. The tendency is for fast through trains, and if we are to have fast trains and close connections, trains cannot stop at every small stations. There must be some trains that can run continuously almost from one terminal to another.

The only question that this commission can determine under the law, is not what particular trains, nor at what particular hour the trains stop

at the several stations along the line of road, but for the people of that particular locality to have reasonable train service, everything considered.

The record shows in this case that there are three passenger trains leaving Galesburg for Peoria each day which stop at Maquon, the first at 5:27 a. m., the next at 10:30 a. m. and the next at 5:24 p. m.

The record shows that they have two trains leaving Peoria for Galesburg, stopping at Maquon, the first in the morning at 8:21 a. m., and the last in the afternoon at 4:12 p. m.

The record also shows some trains each way between Galesburg and Yates City, passing through Maquon, which give the people an outlet in those directions, and making in all, going through Maquon, as the record shows, four passenger trains one way and five the other, and only one train passing through that does not stop.

The train going through Maquon at 5:27 a. m. arrives in Peoria at 6:45 a. m., or just at early business hours, and would give the business man of Maquon until 3:00 p. m. for the transaction of business.

Without going into detail further we can easily understand how every village would like to have every train stop, but upon second thought it is easy to see also that if this was done, there would be no really fast trains. The commission have taken everything into consideration in this matter, compared the service at Maquon with many other villages much larger, and are compelled to the conclusion that the amount of service at Maquon is far about the average furnished villages of that size throughout the State. That being true, under the law and under former holdings of the commission, the commission hold that the railroad company is furnishing reasonable service to the citizens of Maquon, and for that reason this commission would have no power to order a change in the schedule of service, and the petition requiring the fast train to stop at Maquon, will have to be denied.

By order of the commission this 12th day of April, 1911.

O. F. BERRY, *Chairman.*

WAREHOUSES AND GRAIN.

OPINION IN ANSWER TO THE COMMUNICATION OF P. BIRD PRICE.

Hon. John R. Wheeler, Chairman Railroad and Warehouse Commission, Springfield, Ill.

DEAR SIR—At a meeting of your Honorable Board, held in Chicago, September 12, 1889, an amendment to Rule Two was made, creating the grades of Nos. 1, 2 and 3, White Spring Wheat, which amendment, after the statutory publication of twenty days, went into effect October 7, 1889.

By the terms of this amendment, all Spring Wheat containing 5 per cent or over of White Wheat, is required to be graded as "White Spring Wheat."

At the time this amended rule went into effect, there was a considerable quantity of wheat in store in the elevators under the jurisdiction of this department, which, under the original rule, had been graded No. 2 Spring; but which, under the rule as amended, would be graded No. 2 White Spring.

It has been held by former commissions and by this department, as I believe, from its creation, that the authorities were precluded by law from changing the grade of grain while in store, and that, therefore, no new rule could be made to apply to grain in store at the time of its adoption.

In pursuance to this fundamental idea it has been the custom to apply to all grain on coming out of an elevator the rule that was in force when it was received, but, such grain having been once delivered from the house into possession of its rightful owner, under the original rule, and his rights thereby saved as far as possible, it has been held that any further inspection of the grain became a new transaction, to which any new or amended rule then in force would apply, exactly as if the grain in question had arrived from a point outside of the jurisdiction of the department.

In dealing with the questions that have arisen under this amendment of Rule Two, I have adhered to the principle above outlined; and the house inspectors have in every case, of their own motion and without asking or receiving instructions, applied the rule as it stood before amendment to all wheat that was in store October 7th, showing con-

clusively that the custom of applying to grain coming out of store the rule as it stood when the grain was received, was too well established to admit a question of their duty in the premises.

I can see no way to make any change in an established rule without affecting in some way or other the value of the property in store, and equity would seem to require that that course should be pursued which will reduce any damage of this kind to the minimum.

The State Legislature evidently had this in mind when it required a public notice of twenty days to be given before any new rule or amendment could legally go into effect.

To apply a new rule at once might cause very serious damage by reason of existing contracts or already perfected arrangements for handling, and to apply it even after 20 days' notice to grain already in store, could hardly fail, in most cases, to inflict a hardship upon the owners.

Conditions of the market not infrequently exist under which it would be impossible to move the grain from store, within twenty days, without a loss more serious than that occasioned by a change of grade.

On the other hand I can see no way in which injury can be worked by delivering to the holder of a warehouse receipt the grain it calls for under the rule in force when it was issued.

He has then received his grain just as he put it into store, with the same grade, and stands in the same position he would if it had never been in store.

If the receipt has in the meantime changed hands, the purchaser has at least been put upon the inquiry by the statutory notice and the public comment upon every such change, and has an opportunity to protect himself by examining into the quality of the grain to be delivered him, or abstaining from its purchase altogether.

No such opportunity would be given to the holders of receipts if the right of the commission, under the law, to change the grade of grain while in store should be established.

It might be a physical impossibility for him to move his grain, while to let it remain in store a day after the expiration of the statutory notice, would entail a serious decline in the value of his property.

As a considerable amount of grain affected by this rule was in store at the time the amendment went into effect, and as a large part of it is still in store, the questions arising under the amendment will be constantly arising, and that I may have some rule by which to act beyond that of precedent and long established custom, I respectfully ask a ruling by your Honorable Board upon the following points:

1. When grain has been inspected out of a warehouse of Class A, and has been delivered into the absolute possession and control of the owner, has this department any further relation to such grain or any further duty concerning it?

2. When grain is presented for inspection with a view to storage in any warehouse of Class A, is it incumbent upon this department to inquire as to the origin of such grain, or to ascertain whether it has previously been inspected by its employes or not?

3. When grain that is presented for inspection with a view to storage in any warehouse of Class A, has been previously inspected from store

and delivered into the absolute possession and control of its owner, does or does not the duty of this department in relation to it differ from its duty in relation to grain arriving from points outside of its jurisdiction?

4. When grain is presented for inspection with a view to storage in any warehouse of Class A, should the fact (if such should be the case) that such grain has been previously inspected out of the same or any other such warehouse under the provisions of a rule no longer in force, except as to grain going out of store, affect the action of this department?

5. In case of the amendment of an established rule of inspection, should grain already in store be inspected out under the rule as it stood at the time such grain was received, or under the amendment in force at the time of its delivery?

In view of the importance of the interests involved, and of the fact that the owners of some of the grain affected by the amendment above mentioned are desirous of transferring their property from one warehouse to another within the jurisdiction to another within the jurisdiction of the department, I respectfully ask that the ruling of your Honorable Board upon the above points be made as promptly as circumstances will admit.

Very respectfully,

P. BIRD PRICE, *Chief Inspector.*

OPINION.

September 12, 1889, the commission amended the Spring Wheat Rule "No. 2," by creating separate grades for wheat containing 5 per cent or more of the white variety. White Spring had previously been graded with other wheat, without any distinction based on color, and it was all denominated "Spring Wheat." By the amendment so adopted, if 5 per cent or more of wheat is white, it takes the same grade number it would have taken before the amendment, but the word "white" is inserted, making it "White Spring Wheat" instead of "Spring Wheat."

The statutory notice of twenty days was given, and the amended rule went into force October 7, 1889.

The change was made upon urgent and convincing representations made to the commission, and its policy and justice is not questioned in any quarter. Its effect is, that White Wheat is now called in the market by its right name.

It appears from the chief inspector's communication that when this amendment went into effect, there was a quantity of wheat in store in the elevators which, under the original rule, had been graded "No. 2 Spring," but which, under the rule as amended, would be graded "No. 2 White Spring." The questions presented concern entirely the application of this amended rule to the wheat so in store when it went into effect. Shall the rule as amended be applied to this No. 2 Spring Wheat which was in store in the Chicago elevators, and under the jurisdiction of this department at the time the rule took effect; and if not applied to wheat already in store when inspected out, then shall the new rule be

applied to such wheat in case of application being made for re-inspection of it into another elevator? These are the principal questions raised by the inspector's communication.

We understand our predecessors on the commission have uniformly held that changes or amendments of the grading rules were not properly or legally applicable to grain in store when the same took effect, and that such grain should be inspected out under the rule in force when it went in; and the custom and practice of the department have, we learn, always been in accordance with this holding. It has further been the practice of the department to apply to all grain seeking admission into elevators the rule in force at the time application therefor is made.

After full consideration of the interests involved, we see no reason to depart from this uniform ruling of our predecessors and the immemorial practice of the department.

Grain which is in store in warehouses of Class A, and held under warehouse receipts issued in pursuance of the statute, may be said to be strictly under the jurisdiction of the commission. We do not think there is any legal warrant for changing the grade of such wheat while so held. The No. 2 wheat which is involved in the present case, has a fixed value in the markets of the world, depending in some part at least upon the certificate of its grading, that giving it a certain and definite character as a commodity of commerce. To hold that the commission could change the grade and therefore the value of this wheat while in the warehouse, and held under receipt, would be to assume an arbitrary power which we believe the law-makers never intended to confer upon the commission, and it was not the purpose of the commission in amending the rule to give to their action any such application.

It must be remembered that warehousemen of Class A in Illinois perform a public calling, for the performance of which they are required to procure a license, which is revocable by the court upon any failure on their part to comply strictly with the law. Such warehousemen give bond conditioned for a "full and unreserved compliance with the laws," of this State, in relation to warehouses.

A part of that law is in these words: "It shall be the duty of every warehouseman of Class A to receive for storage any grain that may be tendered to him in the usual manner in which warehouses are accustomed to receive the same in the ordinary and usual course of business, etc."

It is further provided that "no warehouseman in this State shall insert in any receipt issued by him any language in any wise limiting or modifying his liabilities or responsibility as imposed by the laws of this State."

It is further provided by the statute that on the return of any warehouse receipt issued by a warehouseman, and the tender of all charges, the property held under the receipt shall be "immediately deliverable to the holder of such receipt;" and that "unless the property represented by such receipt shall be delivered within two business hours after such demand shall have been made, the warehouseman in default shall be liable for damages, in the sum of one cent per bushel, and also a further damage of one cent per bushel for each day of refusal, etc."

In determining what effect shall be given to new or amended rules, all the above provisions of the statute are to be considered. Were it held that a change of rule applies to wheat in store when it takes effect, the obvious result would be that a warehouseman could be compelled by law to take grain into store the day before the change takes effect in the rule which he could not deliver back on the next day upon the same receipt issued therefor. The duty to take the grain and store it is mandatory. Before the changed rule takes effect the grain must of course be graded by the old rule. The warehouseman could not, as we have seen, insert in the receipt "any language in any wise limiting or modifying his liabilities or responsibility" as provided by the statute. In the present case, therefore, it was the legal duty of every warehouseman to receive this wheat up to October 7, 1889, when the rule went into effect, and to give receipts therefor according to the old grading, that is to say, receipts simply for "No. 2 Spring Wheat," even though the grain so offered were White Wheat, and would be graded as "No. 2 White," the moment the new rule took effect. The warehouseman would then be under legal obligations to take wheat as "No. 2 Spring Wheat," and deliver it as "No. 2 White," and all by the arbitrary operation of a rule of this commission. It seems to the commission this would be an exercise of power not warranted by law, and as before observed, the commission did not mean to exercise any such power, but had in view when the amendment was adopted the uniform ruling and practice of the department.

If a change of rule were held to apply to grain already in store, a case might readily be supposed where a warehouseman could not possibly in his deliveries comply with the law. Suppose, for instance, a warehouseman should have on hand, on the day a new rule takes effect, only grain of a variety which would fall under the new grade created by the new rule. His receipts outstanding, having been issued under the old rule, have of course given this wheat on hand the grade and denomination fixed by the old rule. If, therefore, his patrons should apply on the next day for their wheat, how could he possibly give it to them if the new rule is applied? Such a construction would here meet with a physical impossibility, and the case, too, is one which might occur in practice. If we suppose the amount on hand falling under the new grade to be some portion less than the whole, viz: one-half or one-third, there would still be the same difficulty, unless by mixing his wheat the warehouseman could in some way make the whole of it pass as of the original grade. In the present case 5 per cent of White Wheat serves to make the wheat grade "White;" and of course if the amount of White Wheat on hand were less than 5 per cent of the total amount, the mixing of the two kinds together thoroughly would enable the warehouseman to pass it all out as "No. 2 Spring." Otherwise he would have to hold his White Wheat until such time as he could make the necessary dilution, or else lose the difference in the value of the two grades.

We are not saying that the hardships here suggested would all actually occur in the present case, in the event of holding the rule to apply to wheat in store, but are simply supposing cases that might occur as illus-

trating the general principles that should be applied to cases of this kind. The question is one of law, and goes largely to the powers derived by the commission from the statute, in the determination of which the whole statute should be considered.

In regard to in-inspection the case is different; and the fact that wheat presented for inspection into an elevator has previously been stored in a warehouse of Class A and under the jurisdiction of the commission, does not, in the opinion of the commission, present a ground for continuing to inspect it by the old rule. The new rule must be applied somewhere, and we know of no better place to apply it than at the door of the elevator, and to wheat going into store. If wheat has once passed out from the elevator, and the warehouse receipt has been taken up and canceled, it is then out from under the jurisdiction of this commission. If it knocks at the door of another elevator, or even the same elevator for re-admission, it must be treated as any other grain arriving from many other point.

Persons placing wheat in store since the amendment went into effect, have had power to protect themselves, in some measure at least, either by selecting elevators in which there is no White Wheat, of which there are several, or by causing their wheat to be stored in a "separate bin" as provided by the statute, thus insuring the re-delivery to them of the identical wheat stored. The warehouseman, we have seen, has no such power to protect himself against the hardships which an application of the amended rule to wheat in store might impose upon him.

It is perhaps difficult to make any change of grade which would not work an injury to somebody. The statute requiring changes of rule to be published twenty days before taking effect, was no doubt designed, by warning persons interested, to reduce the damages to a small limit by enabling all persons to get ready for the change. The damage that must necessarily result, notwithstanding such notice, out to fall (since it must fall somewhere) upon him who could by diligence best have protected himself.

It is therefore, in reply to the questions of the chief inspector, ruled by the commission:

1. That when grain has been inspected out of warehouses of Class A and has been delivered into the absolute possession and control of the owner, the inspection department has no further relation to such grain, and no further duty concerning it.

2. When grain is presented for inspection with a view to storage in warehouses of Class A, it is not incumbent upon the department to inquire as to the origin of such grain, or to ascertain whether it has previously been inspected by the employés of the department or not.

3. When grain that is presented for inspection with a view to storage in a warehouse of Class A has been previously inspected from store and delivered into the absolute possession and control of its owner, the duty of the inspection department in relation to such grain does not differ from its duty in relation to grain arriving from other points outside of its jurisdiction.

4. When grain is presented for inspection with a view to storage in a warehouse of Class A, the fact that such grain has been previously inspected out of the same or other warehouse under the provisions of a rule no longer in force, should not, except as to grain going out of store, affect the action of the inspection department.

5. In case of the amendment of an established rule of inspection, grain already in store when the rule takes effect, should, in the opinion of the commission, be inspected out under the rule as it stood at the time such grain was received.

Springfield, Ill., Jan. 4, 1890.

Subsequently, on the 21st day of May, 1890, upon further discussion of the question of application of new or amended rules of inspection, the commission unanimously adopted the following general rule to apply to all such cases:

All grain in store of any warehouse of Class A, at the time any amendment to the established rules of inspection, (affecting such grain) may hereafter go into effect, shall be inspected out, (in satisfaction of warehouse receipts dated prior to that time only) in accordance with the rules as they stood prior to such amendment.

CLAIM OF McCURTIE, HILL & Co.

V.

GRAIN INSPECTION DEPARTMENT, CHICAGO.

By PHILLIPS, *Chairman*.

McCurtie, Hill & Co. ask the commission to refund \$20.00 deposited by them upon their appeal from the grading of four certain cars of oats. The track inspector graded the cars "No. 3 oats." Claimants appealed, insisting the grade should be "No. 3 white oats," but the appeals committee affirmed the original inspection. A return of fees is sought upon two grounds, namely:

1. That a proper interpretation and application of the printed rule establishing grades of oats would have made the cargo in question "No. 3 white."

2. That certain similar oats, before inspected for claimants, had been graded "No. 3 white," thereby giving claimants good cause to believe the grade of the four cars would be changed on appeal, and the claimants, having thus been misled, without their fault, should in equity be repaid fees.

That part of rule 4 establishing and defining the two grades of oats which are here in question is as follows:

"No. 3 white oats shall be seven-eighths white, but not sufficiently sound and clean for No. 2" (meaning No. 2 white oats).

"No. 3 oats shall be all oats that are damp, unsound, dirty, or from any cause unfit for No. 2" (meaning No. 2 oats).

The oats in question were all white. So far, therefore, as color alone could be decisive, it points to a grading of these oats as "white;" and claimants contend that upon this ground of color the four cars should have been graded as white oats, if graded at all. One question here is, therefore, whether the element of color is by itself decisive of grade.

The words of the above rule for 3 white, "but not sufficiently sound and clean for No. 2," have received an interpretation by the long practice of the department, which can only be understood by recurring to the definition of the grade of No. 2 white, which latter are required to be "seven-eighths white, sweet, reasonably clean, and reasonably free from other grain." The words in the No. 3 rule, "but not sufficiently sound and clean for No. 2," are held to mean that in soundness and cleanness No. 3 shall be but a single degree or point below what is required for No. 2. This clause is not construed as contended here, to embrace all other oats which are seven-eighths white, and not too unsound and dirty to be graded at all. Such a construction the words might bear, perhaps, if standing alone; but all parts of the rule, establishing grades of oats, should be construed together; and when it is considered that the definition of "No. 3 oats" embraces "*all* oats" of certain defective qualities, we think the interpretation which the 3 white rule has received in practice is not unreasonable. Oats which are musty, very dirty, or unsound are not graded white, even though the color of them is, in fact, such. Such oats, if fit to grade at all, are called "No. 3 oats."

The oats in the four cars of McCourtie, Hill & Co. were musty—so shown to be by the samples produced at the hearing. They had been damp, and, at the date of inspection, were not approximately up in quality to No. 2 white, in soundness and sweetness. Their proper place was, therefore, in the grade of "No. 3 oats," which, it will be seen from the above rule, embrace "*all* oats" of the character described in it; that is to say, oats of all colors which are "damp, unsound, dirty, etc."

The second ground urged is, that a previous inspection made for claimants of similar oats as "No. 3 white" misled claimants into believing in good faith that the cars in question had been wrongly graded, and hence the fees should in equity be refunded.

It does appear from samples shown at the hearing, that certain musty oats, of perhaps no better quality than these four cars, had previously been graded for claimants as "No. 3 white oats." It is not shown what track inspector did this. The alleged misleading inspection was, however, clearly erroneous, and not in line with the general practice of the department.

It would result in no end of difficulty and confusion if we should hold that one inspector is bound to follow the error of another inspector of equal rank, or even that he is bound to follow his own error, if so unfortunate as to make one. The judgment of the track inspector who gave the grade which claimants say they relied upon, is of no higher authority than the judgment of the other track inspector who called these cars "No. 3 oats." If this appeal demonstrates anything it is

that the first inspection was wrong. It is the voice of a tribunal of arbitration provided by law, and its action is conclusive as to the grades of these oats of claimants.

We are sufficiently convinced of the desirability that all inspections should be absolutely correct, if that were possible. So long, however, as the department must rely upon the judgments of fallible men, errors will occur, and will be expected by patrons. The problem is, by wise regulations and proper selection of inspectors, to reduce errors to a minimum. Some hardships would, perhaps, be incident to the best system that human wisdom could devise. Claimants were, no doubt, led by their experience to believe an appeal would, in this case, be successful; and, if their belief had been based upon a judgment of the same tribunal to which their appeal was taken, instead of being based upon the judgment of a track inspector of no higher authority than the judgment appealed from, there would be better reason to say they should in equity be reimbursed. Even then the question would be raised whether the commissioners, unskilled as they are in the technical requirements of inspection, would be willing, by refunding these fees, to discredit the judgment of the appeals committee in a matter peculiarly within the skill and jurisdiction of that committee. The commission does not hold up either its appeals committee or its track inspectors as infallible; but we believe all of them are skillful and conscientious. Unfortunately the grading of grain is not a process which admits of mathematical accuracy. Definitions of grades are after all but words, and words are elastic things. It is less remarkable that errors sometimes occur than that they occur so seldom. If an inspector does err the department can not undertake to be bound by his error, nor to indemnify those who may be so unfortunate as to rely upon the error as authority.

For the reasons given, the claim has been denied.

Adopted March 2, 1892.

CLAIM OF W. W. HUNTER

v.

GRAIN INSPECTION DEPARTMENT AT CHICAGO.

BY PHILLIPS, *Chairman*.

This is a claim of W. W. Hunter for \$19.16 damages alleged to have resulted to him from a clerical error in a certain certificate of inspection of a car of oats. The facts out of which the claim arises have been succinctly stated to the commission by Mr. Price, chief inspector, in the following letter:

CHICAGO, Oct. 23, 1891.

Hon. Isaac N. Phillips, Chairman Railroad and Warehouse Commission, Springfield, Ill.

DEAR SIR—I beg to submit herewith, for the consideration of Your Honorable Board, a claim for \$19.16 made against the department by Mr. W. W. Hunter. The circumstances are as follows:

Car 5032, C. S. L., was inspected on the C., B. & Q. R. R., Sept. 21, 1891, as No. Two (2) Oats, "Subject to approval on unloading." On the same day, car 5062 was inspected as the same grade, but without the qualification.

By an error in copying, Mr. Fishback left the first car off the books. When a certificate on the car was called for, the number could not be found; but 5062, being so nearly the same number, and agreeing exactly as to date and grade, the natural supposition was that one of the figures was wrong. Some one in the office called up the track men and asked which number was correct. The track men happened to find 5032 first, and reported that such was the number on their books. On the strength of this report the number 5062 was erased and 5032 inserted in its place, but without the limitation.

On the strength of the clear certificate furnished him, Mr. Hunter paid for the car and forwarded it to a customer at Kokomo, Ind. In unloading the grain at that point it was discovered that the car was badly "plugged," and that the oats should have been three (3) oats, instead of two (2). The claim of two (2) cents per bushel is a very reasonable one, considering the quality of the oats delivered.

It is impossible to fix the fault definitely upon any person, but at the same time Mr. Hunter has been damaged beyond question by some one or more of the employes of this department. Mr. Fishback erred in leaving the car number off his records. The man also who took the matter up first made an excusable error in jumping at the conclusion that the two cars were identical, while the track men are not entirely blameless, in that they did not, when reporting that they found car 5032 on their books, also report that it was inspected "subject to approval." If this had been done, or if the car had been at first copied as it should have been, Mr. Hunter would have been put upon his guard and a re-inspection ordered which would have developed the true state of affairs, and thrown the blame upon the guilty party.

I know the position in which the commission and the department are placed by the opinion of the Attorney General, but I know also that the public confidence in the department suffers severely whenever we fail in a single instance to make our grades good.

The dissatisfaction among the grain men with what they consider a dishonorable shirking of a plain business responsibility, is growing all the time, and I am forced to take some severe "overhauls" on account of it.

I believe that every man on the Board of Trade, without a single dissenting voice would uphold the position that such claims as this should be paid from the department funds, and further, that all such claims should be paid promptly, and such amounts as may deem best collected back from the inspectors in error.

I know this matter is considered settled, but I respectfully ask your Honorable Board to look carefully into it again and see if there can not be found some justification for following the long line of precedents and

custom of years, rather than the opinion of the Attorney General, which, while it is doubtless good law, is very prejudicial to the rights of the public and the interest and reputation of the department.

Respectfully yours,

P. BIRD PRICE, *Chief Inspector.*

The reasonings of the Attorney General in the opinion referred to by Mr. Price, taken in their broadest scope, might perhaps exclude a claim of the character here presented, but the claim of Franklin, Edson & Co., on which that opinion was rendered was for the error of an inspector and not a clerk. The inspector graded No. 3 wheat as No. 2; and, it may be added, the error was so glaring as to raise a suspicion of the inspector's good faith.

The statute provides that each track inspector shall execute a bond in the penal sum of \$5,000, conditioned among other things, "that he will pay all damages to any person or persons who may be injured by reason of his neglect, refusal, or failure, to comply with the law and the rules and regulations."

One of the contentions of the counsel of Franklin, Edson & Co., in the case on which the Attorney General's opinion was given, was that the bond required by statute of an inspector is for the protection of the department itself as well as of patrons. It was contended the commission could pay the claim of Franklin, Edson & Co., and look to the bond of the inspector for reimbursement. The Attorney General did not, however, concur in this view. He states the liability of the inspectors upon their bonds at page 5 of his opinion, in these words:

"The law requires that he shall be qualified for the duties which he assumes, and his bond is given for the purpose of holding him to the faithful performance of those duties, and to indemnify those who may be injured by his neglect so to do. I note what the claimants and their learned counsel say as to the right to recover on the bond of the assistant inspector (i. e., the right of the commission to recover), but I can not concur either in the reasoning or the conclusions reached by them. The remedy for the injury of which they complain, must, in my opinion, be found by suit on the bond of the assistant inspector; and this remedy seems to be adequate."

After quoting, and commenting upon the law as to what may properly be included in the estimate of expenses which the commission is authorized to raise revenues to meet, the Attorney General concludes his opinion in these words:

"I conclude that the statute confers on the commissioners no authority to use funds collected for the necessary expenses incident to the inspection service in paying claims for injuries arising from false or erroneous inspection." (Page 7.)

Evidently the Attorney General meant to give no opinion beyond the case that was before him, that is to say: The case of a claim for the erroneous grading of grain by an inspector who has given bond under the statute. The substantial basis of the opinion, as we understand it, is the fact that in the case of such damages the statute provides injured parties a complete remedy upon the inspector's bond, and thus

negatives the idea that the commission was expected to pay them. In other words, the law so specifically and clearly points out another remedy that in the opinion of the Attorney General the commission is without power to make other provision for payment; and he holds further that the recovery on the bond must be by the injured party and not by the commission.

As before remarked, this case is not like that of Franklin, Edson & Co. Here the error can not be distinctly traced to any officer or employé of the department who is required by statute to give a bond. The clerks in the office, where the first mischievous errors arose, do not give bond for the protection of patrons. No remedy is, therefore provided by law for errors made by the chief inspector's clerks. Even in the case of those employés who have given bond, we conceive that cases might arise where it would be impossible to trace the error in such way as to furnish to patrons an effective remedy for the injury.

The question is raised whether in such cases this commission shall leave the patrons of the inspection department without a remedy. Unless the commission are at liberty to regard damages, arising from errors made by employés who give no bond, as a part of the necessary expenses of the department, patrons will be left without protection. We are advised by the chief inspector that to do this tends seriously to discredit the inspection department among its patrons, all of whom insist, with much show of reason, that the department should make its grades good.

It was known when this law passed that fallible men would be employed to do the work of the inspection department, and that the most careful men, when acting under the best devised system, will frequently make mistakes. Would it, then, do any violence to the law, or the intention of its framers, to hold that errors committed by employés, which cause patrons damage, shall, in the absence of other express provision for the payment, be taken and held as a part of the necessary expenses of the inspection department, to be paid as other expenses, and for which revenue may properly be raised from inspection fees? Surely such claims for damages could have been as well foreseen as could bills for the rent of offices, or the pay-roll of employés. Nothing else was to have been expected than that errors would occasionally be made, and that damages to patrons would arise therefrom.

While respecting entirely the Attorney General's opinion, we at the same time realize the necessity so well expressed in the chief inspector's letter, of adopting a proper policy for this large department of State work. We are further influenced by the fact lately so well established that the patrons of the department, those from whom the department derives its revenues, are unanimous in their wish that damages arising from errors may be considered as an expense of the department, and considered in fixing the inspection fees. We are, therefore, constrained to adopt a rule permitting the use of the funds of the department for the purpose of paying such claims for damages as may arise from errors that can not be distinctly traced to some employé of the department who is required by statute to give a bond. It is to claims arising from errors of this latter class of employés which we believe the Attorney General

intended to apply his opinion, and there his opinion will be given full force. As already shown, the case before the Attorney General was for a flagrant error committed by a bonded inspector, and his opinion, like the opinions of courts, can not have force, and was not intended to have force beyond the class of facts out of which it arose.

It only remains to be said, that this commission, foreseeing the importance of this question, recommended to the last General Assembly a law authorizing the commission to pay claims of this kind, and providing also for such a change in the wording of the condition of the inspector's bonds as would enable the commission in the first instance to settle all damages for errors as well as of the inspectors as of clerks, leaving the adjustment of the matter of the employé's liability to be settled between him and the commission. This law, which we deem to be urgently needed, passed the Senate but died in the House. We hope the next General Assembly may see the importance of enacting a statute relieving this subject from all doubt, and placing the commission in a position to make good its grades against the errors of all classes of employés.

For the reasons given, the claim of W. W. Hunter, for \$19.16, is hereby ordered paid.

Adopted March 3, 1892.

JOHN C. ROSS AND JOHN HILL, JR., COMPOSING THE WAREHOUSE COMMITTEE BOARD OF TRADE OF CHICAGO

V.

GEO. A. SEAVERNS, ET AL.

Appearances—For petitioners, John Hill, Jr., Hon. H. S. Robbins; for respondents, Hon. J. R. Custer, Hon. James E. Munroe.

OPINION BY W. S. CANTRELL, *Chairman*.

"This is a complaint filed by a committee appointed by the Board of Trade of the city of Chicago against the defendant and twelve other public elevators of Class "A" located in the city of Chicago, charging each of them with a violation of the Railroad and Warehouse law by dealing either directly or indirectly in grain stored in their respective warehouses, by reason of which the complainants ask that the license issued to the defendants be cancelled. The defendants file a motion in each case in the nature of a plea to the jurisdiction of the commission. The question to be passed on now is whether or not this commission has the power to investigate the charges contained in the several complaints, and to make any order concerning the same.

"To determine this question, we must have reference first to the constitution, the organic law of the State, from which the powers of the commission are primarily derived. Article 13, section 1, defines what are public warehouses.

"Section 2. Defines the duties of proprietors, managers, etc., of such warehouses:

"Section 3. Provides that the owners of property stored in any warehouse shall at all times be at liberty to examine not only the property stored but all books and records of such warehouse in regard to such property.

"Section 4. Provides that all railroad companies and other common carriers on railroads shall weigh or measure grain at points where the same is shipped and shall receipt for the full amount and shall be responsible for the delivery of the same at the place of designation.

"Section 5. Provides for the delivery of such grain to the consignee or any elevator or public warehouse, provided the same can be reached by any track owned, leased or used, or which can be used by such railroad companies, and all railroad companies shall permit connections to be made with their tracks for this purpose.

"Section 6. Provides that 'It shall be the duty of the General Assembly to pass all necessary laws to give full effect to this article of the Constitution, which shall be liberally construed so as to protect producers and shippers. And the enumeration of the remedies herein named shall not be construed to deny to the General Assembly the power to prescribe by law such order and further remedies as may be found expedient, or to deprive any person of existing common law remedies.'

"Section 7. Provides that the General Assembly shall pass laws for the inspection of grain for the protection of producers, shippers and receivers of grain and produce.

"The Constitution, of which article 13 is a part, was adopted May 13, 1870, ratified by the People July 2, 1870, and went into effect August 8, 1870.

"On April 13, 1871, 'An Act to establish a Board of Railroad and Warehouse Commissioners and to prescribe their powers and duties was passed and approved and went into effect July 1, 1871.

"Section 11. Of said Act provides that said commissioners shall examine into the condition and management and all other matters concerning the business of railroads and warehouses in this State so far as the same pertains to the relations of such railroads and warehouses to the public, etc., and whether such warehouses, their officers, managers, etc., comply with the laws of this State now in force or which shall hereafter be in force concerning them. And whenever it shall come to the knowledge, either upon complaint or otherwise, or they shall have reason to believe that any such law or laws shall have been or are being violated, they shall prosecute or cause them to be prosecuted.

"Section 12. Provides that said commissioners are hereby authorized to hear and determine all applications for the cancellation of warehouse licenses which may be issued in pursuance of any law of this State, and to adopt such rules concerning such hearing and determination as may from time to time by them be deemed proper, and if upon such hearing it shall appear that any public warehouse has been guilty of violating the law concerning the business of such public warehousemen, said commissioners may cancel and revoke the license of such warehousemen.

"It will be observed that there is no provision whatever in this Act requiring public warehousemen to take out a license, the only reference to the question of license being found in section 12 last above quoted. Therefore we are relegated to the following Act for authority to license public warehouses, 'An Act to regulate public warehouses, and the warehousing and inspection of grain, and to give effect to article 13 of the Constitution of this State.' This Act was approved April 25, 1871, and in force July 1, 1871.

"Section 1. Provides that the property lessee or manager, before transacting any business, shall first obtain a license from the circuit court of the county in which such warehouse is located—and that such license shall be revokable by the court upon proof of the violation of law.

"Section 4. Provides that licensee shall give bond.

"Section 5. Provides that any person who shall transact the business of a public warehouse of Class "A" without first having obtained a license, or who shall continue to transact any such business after such license shall have been revoked, shall be fined.

"The question now recurs upon the construction of the two acts above referred to. Do they conflict? Is either repugnant to the other?

"The statute should be so construed that the whole, if possible, shall stand when it can be so construed and applied as to avoid a conflict with the Constitution, such construction must be adopted—*Porter v. R. I. & St. L. R. R.*, 76 Ill., 561.

"In the construction of statutes all of the provisions are taken together in ascertaining the intention of the law-giver. *Davis v. Haydon*, 3 Scam., 35.

"A section of a statute will be construed with reference to the provisions of other sections relating to the same subject and so as to leave all the words in the different sections in full effect according to their ordinary and usually accepted meaning. *Thompson v. Bulson*, 78 Ill., 277.

"In construing statutes we must be governed by the intention of the Legislature.

"The law does not favor a repeal by implication. The earliest statute continues in force unless the two are clearly inconsistent with and repugnant to each other, or unless in the latest statute some express notice is taken of the former, plainly indicating an intention to repeal it.

"*Ottawa v. LaSalle Co.*, 12 Ill., 339.

"Where two acts are seemingly repugnant they should, if possible, be so construed that the latter may not operate as a repeal of the former by implication.

"*Bruce v. Schuyler*, 4 Gibn., 221.

"*Town of Ottawa v. LaSalle Co.*, 12 Ill., 339.

"So a subsequent statute which is general does not abrogate a former statute which is particular. And a general law does not operate as a repeal of a special law on the same subject passed at the same session.

"*Id.*: *Covington v. City of East St. Louis*, 78 Ill., 548.

"But whenever a reasonable construction can be given by which both acts may stand, it will be done.

"Cord v. McCaleb, 69 Ill., 314.

"Chicago v. Quimby, 38 Ill., 274.

"While the first Act referred to gives the Board of Railroad and Warehouse Commissioners the authority to cancel or revoke the license issued to public warehousemen, it does not in express terms provide for or require a license.

"The second Act, however, cures this defect by requiring public warehousemen to take out a license, and also provides that the same power to whom is delegated the authority to grant the license shall have power in a proper case to revoke it. But construing both Acts together, there is no question in the minds of the commission but that either the circuit court granting the license, or the Board of Commissioners, who have the power to determine by investigation whether either of said Acts have been violated, either has the power to cancel or revoke such licenses. Their powers are concurrent in that respect.

"We are not unmindful of the general common law doctrine that the authority to issue a license carries with it the power to revoke it, but in the case presented there is special statute extending this power to the Board of Railroad and Warehouse Commissioners, thereby enlarging the common law, and we are not left to speculate or surmise as to the intention of the Legislature in enacting the statute, as it is explicit. The constitutionality of this law has been passed upon by the Supreme Court of this State and by the United States Supreme Court, in the case of *Munn et al v. The People*, in which both courts held the Act constitutional.

"The Acts of April 13 and 25 both became operative on the same day, notwithstanding they were passed and approved on different days; therefore, unless there is a conflict, repugnance or inconsistency between the two Acts, there can be no reason for holding either void, but both must be held to be in force.

"For the reasons above stated, the motion to dismiss is overruled."

Evidence was then heard and the cases taken under advisement by the commission.

On the 23d day of September the following was filed and adopted by the commission:

OPINION BY W. S. CANTRELL, *Chairman*.

"On March 8, 1895, John C. Ross and John Hill, Jr., members of the Warehouse Committee of the Board of Trade of the City of Chicago, filed in the office of the Railroad and Warehouse Commission of Illinois, at Springfield, complaints against the following public elevators or warehousemen of Class 'A' doing business in the city of Chicago, to-wit:

"Geo. A. Seaverns, Chas. Counselman & Co., South Chicago Elevator, Santa Fé Elevator, Central Elevator, Keith & Co., Chicago Elevator Co., National Elevator & Dock Co., Chicago & Pacific Elevator Co., A. C. Davis & Co., Chicago Railway & Terminal Elevator Co., Armour Elevator Co., and Illinois Trust & Savings Bank, charging, in substance, that

each and every one of said elevators were operated as public warehouses of Class 'A' under a license from the Circuit Court of Cook County, and that the said owners, proprietors or managers of said respective warehouses or elevators, and each of them, had been guilty of violating the laws of the State of Illinois, in that they and each of them did either directly or indirectly buy, sell, own and deal in grain stored in said elevators, and that they and each of them mixed the grain owned by them with the grain of other persons stored by them in said elevators. And that said warehousemen were transacting their business for private gain, and not for the public good, and asking that the Railroad and Warehouse Commission cancel and revoke the license of each of said elevators.'

"These cases were set down to be heard at the Palmer House, Chicago, at the request of the counsel representing complainants and respondents, for April 4, 1895. On the hearing, counsel for respondents filed a motion in the nature of a plea to the jurisdiction of the commission, which was overruled. A large number of witnesses were introduced on the part of the complainants. Also a large amount of documentary evidence. No evidence whatever was introduced by the respondents. Counsel for respondents insisting that the commission had no jurisdiction to hear and determine the questions involved in the complaints. There is no controversy as to the facts in these cases, sufficient evidence having been introduced to make out the charges contained in all the cases, with the exception of the Armour Elevator Co., A. C. Davis & Co., The Chicago Railway Terminal Elevator Co. and the Illinois Trust & Savings Bank. The facts being settled, then the only remaining question to be determined, has the commission the power to hear and determine the charges contained in the several complaints, and to make an order concerning the same?

"The Constitution, the organic law of the State, from which the powers of the commission are primarily derived, defines public warehouses to be 'All elevators or storehouses where grain or other property is stored for a compensation, whether the property stored be kept separate or not.' See Art. 13, Sec. 1.

"Section 2 defines the duties of proprietors, managers, etc., of such warehouses.

"Section 3 provides that the owner of property stored in any warehouse shall at all times be at liberty to examine, not only the property stored, but all books and records of such warehouse in regard to such property.

"Section 4 provides that all railroad companies and other common carriers on railroads shall weigh or measure grain at points where it is shipped, and receipt for the full amount, and shall be responsible for the delivery of the same at the place of destination.

"Section 5 provides for the delivery of such grain to the consignee thereof, or any elevator or public warehouse to which it may be consigned: *Provided*, such consignee or the elevator or public warehouse can be reached by any track owned, leased, or used, or which can be used by such railroad companies, and all railroad companies shall permit connections to be made with these tracks for this purpose.

"Section 6 provides that 'It shall be the duty of the General Assembly to pass all necessary laws to give full effect to this article of the Constitution, which shall be liberally construed, so as to protect producers and shippers.'

"Section 7 provides that the General Assembly shall pass laws for the protection of producers, shippers and receivers of grain, etc.

"The Constitution, of which article 13 is a part, was adopted May 13, 1870, ratified by the people July 2, 1870, and went into effect August 8, 1870.

"On April 13, 1871, an Act to establish a Board of Railroad and Warehouse Commissioners, and to prescribe their powers and duties, was passed by the General Assembly of the State of Illinois, approved by the Governor, and went into effect July 1, 1871.

"Section 1 provides for the appointment and defines the term of the commission.

"Section 2, the qualification of the commissioners.

"Section 3, the oath and bond.

"Section 4, the compensation, etc.

"Section 5, 6, 7 and 8 are applicable to railroads only.

"Section 9 provides that it shall be the duty of every owner, lessee and manager of every public warehouse in this State to furnish in writing, under oath, at such times as the Railroad and Warehouse Commissioners require and prescribe, a statement concerning the condition and management of his business as such warehouseman.

"Section 10 provides that the commissioners shall report to the Governor.

"Section 11 provides that said commissioners shall examine into the condition and management and all other matters concerning the business of railroads and warehouses in this State so far as the same pertains to the relation of such railroads and warehouses to the public. * * * And whether such railroads and warehouses, their officers, directors, managers, lessees, agents, etc., comply with the law concerning them.

"Section 12 provides that said commissioners are hereby authorized to hear and determine all applications for the cancellation of warehouse licenses which may be issued in pursuance of any laws of this State, and for that purpose to make and adopt such rules and regulations as may by them be deemed proper. And if upon such hearing it shall appear that any public warehouseman has been guilty of violating any laws of this State concerning the business of public warehouses, said commissioners may cancel and revoke the license of said public warehouseman.

"On April 25, 1871, there was passed by the General Assembly, and approved by the Governor, 'An Act to regulate public warehouses, and the warehousing and inspection of grain, and to give effect to article 13 of the Constitution of this State,' in force July 1, 1871.

"Section 1 provides that public warehouses shall be divided into three classes—A, B and C.

"Section 2 defines a public warehouse of class 'A' to be all warehouses, elevators, etc., in which grain is stored in bulk, and in which the grain of different owners is mixed together, or in which grain is stored in such

a manner that the identity of different lots or parcels can not be accurately preserved. Such warehouses, etc., being located in cities having not less than 100,000 inhabitants. * * *

"Section 3 requires the lessee or manager, before transacting any business in such warehouse, to take out a license from the circuit court of the county in which such warehouse is located, and that such license shall be revocable by the court upon proof of the violation of law.

"Section 4 provides that licensee shall give bond for the faithful performance of his duty as a public warehouseman of Class 'A.'

"Section 6 provides that such warehouseman shall receive for storage any grain that may be tendered him, * * * not making any discrimination between persons.

"The two Acts of the General Assembly above referred to were enacted for the purpose of giving effect to article 13 of the Constitution, and although both operative on the same day, they were passed and approved on different days. Therefore, unless there is a plain conflict, repugnance or inconsistency between the two Acts, there is no reason or authority for holding either void, but both must be sustained. It is insisted by counsel for respondents that these complaints should have been filed in the circuit court instead of being brought before the Railroad and Warehouse Commission. While it is doubtless true that the circuit court has jurisdiction in such cases, yet it is equally true that the same jurisdiction is given the Railroad and Warehouse Commission, and parties complainant have the right under the law to file their complaint either with the circuit court or the Railroad and Warehouse Commission. Or, in other words, they have the right to select either forum in which they may be heard.

"It is manifest that the intention of the Legislature in passing these Acts was to give more definite expression to article 13 of the Constitution, and instead of circumscribing those for whose benefit the law was intended, to-wit: producers and receivers of grain, and confining them within narrow limits, they gave them the option to have their complaints heard either in the circuit court or before the Railroad and Warehouse Commission, the jurisdiction of either in cases under these Acts being concurrent.

"It is a well settled rule in the construction of statutes that all the provisions of an Act should be taken together, and where two Acts on the same subject have been passed by the Legislature at the same session, they must both stand, unless there is clearly a conflict, repugnance or inconsistency between them. The law does not favor a repeal by implication. *Ottawa v. LaSalle County*, 12 Ill., 339. A general law does not operate as a repeal of a special law on the same subject passed at the same session. *Covington v. City of East St. Louis*, 78 Ill., 548; *Chicago v. Quimby*, 38 Ill., 274; *Cord v. McCaleb*, 69 Ill., 514. Numerous authorities could be cited sustaining this rule of construction of statutes, but it is so well settled that further citations are unnecessary.

"Therefore, the opinion of the commission is that it has jurisdiction of the subject matter and of the parties in these proceedings, and has

the power to hear and determine applications for the concellation and revocation of the licenses of warehousemen of Class 'A' or public warehousemen.

"The question of jurisdiction being disposed of, the next question involved is, 'Have the proprietors, managers or lessees of public warehouses the right, under the law, either directly or indirectly, to buy or sell grain and handle the same through their own public warehouses, and mix the same with the grain of their customers?'"

"This question was before the commission on a former occasion before any formal complaints had been filed, and was answered by the chairman of the commission in the negative. A thorough and careful examination of the authorities on this subject since the cases herein were submitted confirms the position assumed, and we now affirm it.

"It will be borne in mind that all references to warehouses or warehousemen in this opinion are confined to warehouses and warehousemen of class 'A.'

"A public warehouseman for the storage of grain is engaged in a public employment and occupies a position similar to other public servants. Before transacting any business in his warehouse he is required to obtain a license from the circuit court of the county in which his warehouse is located, and to give a bond in the sum of ten thousand (\$10,000.00) dollars for the faithful discharge of his duties. Why are these requirements necessary? Because he is dealing with the public, and the object of this law is to 'protect the public.' If a warehouseman other than of Class 'A' desires to buy, sell or store grain on his own account in his private warehouse, he can do so without license or bond. But when he opens a public warehouse he is required by law to receive grain from all persons upon equal terms and without discrimination, for which service he is allowed a compensation. Will it be seriously contended for a moment that the Legislature intended to give him the right to store his own grain in his own public warehouse and mix it with the grain of his customers, and to receive grain from himself and issue receipts to himself for his own grain, and lastly, charge himself for the storage of his own grain in his own warehouse? We think that such a contention would not be seriously urged.

"The Legislature has placed certain restrictions upon public warehousemen; it has regulated their charges for storage so that the warehouseman shall not practice extortion upon his customers; it has prohibited him from mixing grain of different grades together, and he is not permitted to tamper with the grain while in his possession or custody. Such regulations would not be necessary only for the fact that he is the custodian or bailee for the owner of the grain stored, and it is his duty to take care of said grain for the owner. The object of this law is to protect producers and shippers against exorbitant charges on the part of warehousemen, against unjust discrimination and against all species of fraud. *Munn v. The People.*

"Our decision therefore is that public warehousemen can not, under the law, either directly or indirectly, buy or sell grain and handle the same through their own public warehouse; that to do so is against not

only the letter but the spirit of the law; that it is against public policy; that it is a discrimination against the public, and that it affords an opportunity to practice frauds upon those dealing with such warehouses.

"An order will therefore be made revoking and cancelling the license of each of the following warehouses, viz: Geo. A. Seaverns, South Chicago Elevator, Santa Fé Elevator, Rock Island Elevator, Central Elevator, Keith & Co., Chicago Elevator Co., National Elevator & Dock Co., and the Chicago & Pacific Elevator Co.

Entered this 23d day of September, A. D. 1895.

W. S. CANTRELL, *Chairman*.

ST. LOUIS TRAFFIC BUREAU, ET AL

V.

ALL RAILROADS TERMINATING AT EAST ST. LOUIS, ILLINOIS.

OPINION BY NEVILLE, *Chairman*.

For seven years prior to the first of November, 1902, the railroad companies doing business in East St. Louis and within the switching limits thereof, had the following rules:

"1. All cars of oats, corn, wheat and rye received, not consigned to elevators or specific track delivery, or so ordered before arrival, will be held on tracks for inspection and sale, until 5 p. m. of the day following delivery of notice of arrival. If by that time, cars are ordered to some destination within the yard limits of the company they will be sent to such point without extra charge. If ordered after 5 p. m. of the day following notice of arrival, usual switching charges will be collected.

"2. If disposition is not furnished for cars by 5 p. m. of the day after delivery of notice of arrival, grain will be stored in public elevator, the usual switching charge being made for handling to elevators.

"3. All cars arriving consigned to some specific point of delivery, or ordered before arrival, will be delivered at point designated on arrival. If ordered from said point after being properly placed, usual switching charges will be made.

"4. Sundays and legal holidays are not to be counted in allowance of free time for resignment."

Shortly before November 1, 1902, the several railroad companies gave notice to the shippers and receivers of grain within the switching limits of East St. Louis, that on and after November 1, the following order or rule would be in force:

"Effective November 1, 1902, a regular switching and reconsignment charge, minimum \$2.00 per car, will be made on all commodities reconsigned within the switching limits of St. Louis and East St. Louis."

About that time the shippers and receivers of grain of East St. Louis, filed with the Railroad and Warehouse Commission a petition protesting against the change in rules, and the adoption of the rule making a charge

of \$2.00 on all cars of grain reconsigned within the switching limits of East St. Louis. The case was set for hearing before this board and on the 19th day of November, 1902, the general managers of the several railroads had a meeting at which they passed the following resolution:

"Resolved, That the reconsignment charge be assessed on all commodities reconsigned within the switching limits of East St. Louis and St. Louis, when designated to points within such limits only."

Notice of which was never given to the petitioners until the day of trial of this case in St. Louis, about the 25th day of November, and up to that time the evidence shows that the several railroad companies had been charging the \$2.00 reconsignment charge on cars that were reconsigned outside of the switching limits of the city of East St. Louis as well as those within the switching limits.

It is contended by the petitioners, that the charge of \$2.00 for reconsigning grain after it has been delivered to their tracks called "the hold tracks," as provided by their last rule, is an unjust charge and that in view of the fact that it is only charged when reconsignments are made to interchange tracks with other roads, or to elevators or warehouses on their own road, when the said grains are to be unloaded within the switching limits of East St. Louis and are not made when cars are delivered to such interchange tracks for the purpose of being shipped beyond the switching limits of East St. Louis, is an unjust discrimination. On the other hand, it is contended by the respondents that it is not an unjust discrimination and is within the law laid down by the Supreme Court in the case of the C. & N. W. R. R. Co. against Stanbor, 87th Ill., 195, and that the same rule has been adhered to in the case of C., M. & N. R. R. Co. against the National Elevator Co., 153 Ill., 70. We have examined both cases very carefully and from such examinations are led to believe that the two cases differ on the question of the meaning of the term "reconsignment." The first was a case under penal statute, which is section 3, and is as follows:

"Every railroad corporation which shall receive any grain in bulk for transportation to any place within this State, shall transport and deliver the same to any consignee, elevator, warehouse, or place to whom or to which it may be consigned or directed; *provided*, such person, warehouse or place can be reached by any track owned, leased or used, or which can be used by such corporation; and every such corporation shall permit connections to be made and maintained with its track to and from any and all public warehouses where grain is or may be stored. Any such corporation neglecting or refusing to comply with the requirements of this section, shall be liable to all persons injured thereby for all damages which they may sustain on that account, whether such damages result from any depreciation in the value of such property by such neglect or refusal to deliver such grain as directed, or in loss to the proprietor or manager of any public warehouse to which it is directed to be delivered and cost of suit, including such reasonable attorney's fees as shall be taxed by the court. And in case of any second or later refusal of such railroad corporation to comply with the requirements of this section, such corporation shall be by the court, in the action on which

such failure or refusal shall be found, adjudged to pay for the use of the people of this State a sum of not less than one thousand dollars nor more than five thousand dollars for each and every such failure or refusal, and this may be a part of the judgment of the court in any second or later proceeding against such corporation. In case any railroad corporation shall be found guilty of having violated, failed or omitted to observe and comply with the requirements of this section, or any part thereof, three or more times it shall be lawful for any person interested to apply to a court of chancery and obtain the appointment of a receiver to take charge of and manage such railroad corporation until all damages, penalties, costs and expenses adjudged against such corporation for any and every violation shall, together with the interest, be fully satisfied."

The second case is under section 4, which is as follows:

"All consignments of grain to any elevator or public warehouse shall be held to be temporary, and subject to change by the consignee or consignor at any time previous to the actual unloading of such property from the car in which it is transported. Notice of any change in consignment may be served by the consignee on any agent of the railroad corporation having the property in possession who may be in charge of the business of such corporation at the point where such property is to be delivered; and if, after such notice, and while the same remains uncanceled, such property is delivered in any way different from such altered or changed consignment, such railroad corporation shall, at the election of the consignee or person entitled to control such property, be deemed to have illegally appropriated such property to its own use, and shall be liable to pay the owner or consignee of such property double the value of the property so appropriated; and no extra charge shall be permitted by the corporation having the custody of such property, in consequence of such change of consignment."

This is on a different subject, that is, the question of reconsignment of grain before delivery without extra charge or compensation. In the C., M. & N. case, 153 Ill., 84, the courts say:

"And so if in section 3 of the Act the word 'consignment' is used in the sense of indicating a consignment made at the time and point of shipment and such consignment only, yet, in section 4 the word 'consignment' seems to have an enlarged sense attached to it, that of denoting a direction or consignment to a particular elevator or warehouse at any time prior to the actual unloading of the grain from the cars in which it was transported."

"If that is true, then there is no right in the railroad companies to charge an extra charge in consequence of such reconsignment in addition to the regular freight on said grain. We can see that the receiver of grain might, in the ordinary management of his business not know where he would want his cars of grain delivered until after they were inspected. He might want a car of grain that would inspect one grade at one place, and another grade at another place, where, under the law he has a reasonable time after the grain has been delivered to the place of inspection, and after notice of such delivery to inspect or have the

grain inspected, and then direct where it should be delivered, without any additional charge over and above the regular freight on such grain from the point of shipment to the point of delivery, as directed after such inspection. The question then remains as to what is a reasonable time. As will be seen by the old rules above set forth, the respondents themselves prior to November 1st, allowed until 5:00 o'clock p. m. of the day following the delivery of notice of the arrival of the grain, and if by that time cars were ordered to some destination within the yard limits of the city, they were sent there without extra charge; if ordered after 5:00 o'clock p. m. of the day after delivery of notice of arrival, the usual charge was made. In view of the fact that under the old rules the respondents considered that a reasonable time, we hold in this case that is a reasonable time, and the order will be as follows:

It is therefore ordered by the Railroad and Warehouse Commission of the State of Illinois, that all railroads running into and doing business within the city of or switching limits of East St. Louis, shall hereafter allow all shippers or receivers of grain within said district, a reasonable time to direct said railroad companies where to deliver said grain after they have had notice of its arrival within the switching limits of East St. Louis, when said grain is shipped from a point within the State of Illinois to East St. Louis, and that such reasonable time shall be until 5:00 o'clock p. m. the day following delivery of notice of arrival thereof, and that no extra charge shall be made for delivering said grain to any warehouse, elevator or interchange track where said grain is to be delivered within the switching limits of East St. Louis, until after 5:00 o'clock p. m. of the day following the delivery of notice of such arrival to the consignee, receiver, or person entitled to receive said grain.

January 13, 1903.

JAMES S. NEVILLE, *Chairman*;
ARTHUR L. FRENCH, *Commissioner*.

IN RE PETITION OF ILLINOIS GRAIN DEALERS' ASSOCIATION.

At the August term, 1905, of the city court of East St. Louis an order and decree was entered in a certain cause then pending in said court wherein the People of the State of Illinois ex rel. the Railroad and Warehouse Commissioners were complainants and Jacob Koerner et al were defendants, which among other things provided as follows:

"The tare to be allowed in each case is by agreement to be fifty (50) pounds per car for each car containing forty thousand (40,000) pounds or under and one hundred (100) pounds per car for each car containing over forty thousand (40,000) pounds."

In compliance with this order and decree, this commission, on the 9th day of August, 1905, entered the following order:

"ORDER OF THE RAILROAD AND WAREHOUSE COMMISSION APPROVING AGREEMENT BETWEEN RECEIVERS OF GRAIN AND OPERATORS OF ELEVATORS OF EAST ST. LOUIS AND VENICE, ILLINOIS, WITH REFERENCE TO ALLOWANCE OF TARE.

"WHEREAS, There has been a difference between the receivers of grain and operators of elevators at East St. Louis and Venice, Illinois, with reference to an allowance of tare to the operators of elevators; and,

WHEREAS, Said receivers of grain and operators of elevators have settled by mutual agreement whereby tare of fifty pounds is to be allowed on each car of grain weighing forty thousand (40,000) pounds and under, and one hundred (100) pounds on each car weighing over forty thousand (40,000) pounds; and,

"WHEREAS, This commission has investigated the question of allowance of tare and finds that the agreement entered into between said receivers of grain and operators of elevators is reasonable and just; it is therefore,

"Ordered by this commission, That said agreement between receivers of grain and operators of elevators at East St. Louis and Venice, Illinois, be and the same is hereby approved. The official weighers of grain at East St. Louis and Venice, Illinois, are hereby instructed to make said allowance and they are authorized to stamp on certificates issued by them the following:

"The deduction for tare shown by this certificate is by agreement between elevators and grain receivers, approved by the Railroad and Warehouse Commission of Illinois."

After the promulgation of the above order of the commission, the official weighers of grain at East St. Louis and Venice, Illinois, deducted from the actual weight of each car of grain received the "tare" authorized by the order.

Notice of the application of the representatives of the complainant for a cancellation of this order having been given to all parties interested, the matter was set down for hearing at the office of the commission at Springfield, Illinois, on March 5, 1907, at which time and place a full hearing was accorded the parties in interest.

In addition to the evidence offered and the arguments presented the following communication from the board of directors of the Merchants' Exchange of St. Louis, Mo., was received:

"St. Louis, March 2, 1907.

"To the Honorable the Board of Railroad and Warehouse Commissioners of the State of Illinois, Springfield, Ill.:

"GENTLEMEN—The board of directors of the Merchants' Exchange of St. Louis respectfully petition your Honorable Body to rescind the order

permitting the deduction of the so-called 'tare' on grain unloaded at elevators at East St. Louis and adjacent points under the jurisdiction of the Railroad and Warehouse Commissioners of Illinois.

"Trusting that you will see the reasonableness of this request, we remain,

"Yours very truly,

"THE BOARD OF DIRECTORS OF THE MERCHANTS' EXCHANGE,

"By GEO. H. PLANT, *President*.

"GEO. H. MORGAN, *Secretary*."

After a full consideration of the facts, we have arrived at the conclusion that no reason now exists for making an arbitrary deduction from the actual weight of all grain weighed at East St. Louis and Venice. On the other hand, when an unusual amount of dirt or foreign matter is found inseparably mixed with the grain, reasonable deductions should be made on account thereof.

It is therefore ordered, That the order of this commission, entered on the 9th day of August, 1905, and hereinbefore set forth be and the same is hereby set aside, cancelled and annulled. And it is further ordered, that no dockage from actual weights shall be allowed on incoming or outgoing grain at East St. Louis and Venice, except when unusual dirt or foreign matter is inseparably mixed with the grain, in which case it shall be the duty of the official weighers of grain to determine the amount of unusual dirt or foreign matter and to weigh the entire contents of the car. All allowances for unusual dirt or foreign matter shall appear on the face of the certificate issued for such car or cars.

Dated this 20th day of March, A. D. 1907, at Springfield, Ill.

W. H. BOYS, *Chairman*;

J. A. WILLOUGHBY, *Commissioner*.

BOND OF "CLASS A."

Ordered, That in the issuance of licenses to elevators of Class "A" the amount of the bond to be required of the applicant shall in all ordinary cases be based upon the capacity of the elevators, as follows:

CAPACITY.	BOND.
500,000 or less	\$10,000 00
Over 500,000 and less than 1,000,000	20,000 00
1,000,000 and less than 1,500,000	30,000 00
1,500,000 and less than 2,000,000	40,000 00
2,000,000 and less than 2,500,000	50,000 00
2,500,000 and less than 3,000,000	60,000 00
3,000,000 and above	75,000 00

Such bonds to be signed by some surety company (as surety) to be approved by the commission.

The right is reserved in all cases to, at any time, require any license to file a new bond in the same or an increased amount with the same or different sureties as the commission may require.

This order was entered of record at a meeting held in Chicago on August 29, 1907.

IN THE MATTER OF THE COMPLAINT OF THE ILLINOIS GRAIN DEALERS'
ASSOCIATION IN RE INSPECTION AND WEIGHING OF GRAIN AT CAIRO,
ILLINOIS.

This was a complaint filed with the commission calling attention to the fact that certain persons in Cairo, Illinois, using and operating certain elevators, were inspecting grain and issuing certificates of inspection without authority of law.

Public warehouses are defined in article 13 of the Constitution and are divided into three classes to be designated as class "A," "B" and "C." Section two of the Act in relation to warehouses, defines the several classes as follows:

Public warehouses of class "A" shall embrace all warehouses, elevators and granaries in which grain is stored in bulk and in which the grain of different owners is mixed together, or in which grain is stored in such manner that the identity of different lots or parcels cannot be accurately preserved, such warehouses, elevators or granaries being located in cities having not less than 100,000 inhabitants. This being true, class "A" is removed from consideration in this proceeding.

Public warehouses of class "B" shall embrace all other warehouses, elevators or granaries in which grain is stored in bulk, and in which the grain of different owners is mixed together. And public warehouses of class "C" shall embrace all other warehouses or places where property of any kind is stored for a consideration.

Section 14 of the same Act provides that it shall be the duty of the Governor to appoint by and with the advice and consent of the Senate, a suitable person who shall not be a member of the Board of Trade, and who shall not be interested either directly or indirectly in any warehouse in this State, a chief inspector of grain for the entire State of Illinois, who shall hold his office for a term of two years unless removed as hereinafter provided.

Section two of the same Act provides that it shall be the duty of the chief inspector of grain to have general supervision of the inspection of grain, as required by this Act or laws of this State, under the advice and immediate direction of the Board of Commissioners of Railroads and Warehouses.

Section three provides that the chief grain inspector shall have the authority to appoint upon the approval of the Board of Commissioners of Railroads and Warehouses, such suitable persons in sufficient numbers to act as deputy inspectors, who shall not be members of the Board of Trade or interested in any warehouse, and also such other employes as may be necessary to properly conduct the business of the office.

It will be noted that section three also contains the following provision:

"But no deputy inspector shall be appointed for or assigned to duty in any city or county in which is located one or more elevators of class "B," except on a request for such action by the county commissioners or board of supervisors of the county in which such warehouse or warehouses are located. Such request to be made to the Railroad and Warehouse Commissioners."

Section twenty-two of the same Act provides that it shall be unlawful for any proprietor, lessee or manager of any public warehouse to enter into any contract, agreement, understanding or combination with any railroad company or other corporation or with any individual or individuals, by which the property of any person is to be delivered to any public warehouse for storage, or for any other purpose, contrary to the direction of the owner, agent or consignee.

Section twenty-five of the same Act provides that any warehouseman of any public warehouse, who shall be guilty of issuing any warehouse receipts for any property not actually in store at the time of issuing such receipts, or who shall be guilty of issuing any warehouse receipt in any respect fraudulent in its character, either as to its date or the quantity, quality or inspected grade of such property, or who shall remove any property from store without the return and cancellation of any and all outstanding receipts that may have been issued to represent such property, shall be convicted, etc.

Section twenty-seven of the Act provides that all proprietors or managers of public warehouses shall keep posted up at all times in a conspicuous place in their business office and each of their warehouses, a printed copy of this Act.

These are all of the sections of the Act that have any application to the question of consideration at this time.

Section nine of the Act creating the Board of Railroad and Warehouse Commissioners, provides: It shall be the duty of every owner, lessee or manager of every public warehouse in this State to furnish in writing, under oath, at such times as such Railroad and Warehouse Commission shall require and prescribe, a statement concerning the conditions and the management of its business as such warehouseman.

It appears from the testimony here, and the facts in the case are not denied, that the City of Cairo is a city of less than 100,000 inhabitants, and that the warehouses in such city, as shown by the evidence, would come under class "B" of the Act in relation to warehouses.

It further appears that no application has even been made to the Board of Railroad and Warehouse Commissioners to establish inspection or take charge thereof of such elevators in the city of Cairo, county of Alexander, State of Illinois, and that the inspection referred to and complained of is an inspection now under the general supervision of the Board of Trade of the city of Cairo and that the inspection and weighing of grain at such point is done by persons appointed, directed and controlled by such Board of Trade, and that the certificates of inspection so issued are issued by authority of the Board of Trade, and state such fact upon their face.

A careful examination of the law upon this subject clearly shows several conflicting sections in the Act. The chief grain inspector is appointed for the entire State of Illinois, clearly indicating the intention of the Legislature to make such inspection universal. The supervision of one or two of the other sections show that no inspection shall be had in certain counties, unless application is made for that purpose, and very much restricts, if it has force, such state wide inspection. While section nine of the Act creating the Board of Railroad and Warehouse Commissioners, all of which Acts were passed by the same General Assembly, clearly indicates that it was the intention in that Act to require all public warehouses to be under the supervision of such commission.

Construing the whole Act together, we are not prepared to hold that this commission has jurisdiction for the purpose of inspection of warehouses of class "B" and "C" unless proper application is made by the authorities as stated in the Act. That Act prevents the appointment of deputy inspectors for such warehouses. The commission appoints the chief grain inspector and gives him jurisdiction over the entire State, and while he might not appoint a deputy inspector to inspect such county or city, if he were to inspect himself or to supervise the inspectors appointed by the Board of Trade of Cairo, another question of even greater importance might be raised. But if the Act is to be construed altogether, it was evidently the intention of the Legislature that no deputy inspector should be appointed in such cities and counties, unless a request was made for the same.

While that is true, there can be no question but that the commission has authority to require from every warehouse in the State regular monthly or weekly reports as they may see fit, on blanks prepared by them for said purpose, and as a result of this hearing, and the importance of the matter, the commission believes it is not only its privilege, but its duty, to require such reports. But the commission hold that the complaint in this case cannot be sustained, therefore the same is dismissed.

By order of the commission this 26th day of July, 1911, dated at Springfield, Illinois.

O. F. BERRY, *Chairman.*

RAILROAD AND WAREHOUSE COMMISSION

ON RELATION OF

ILLINOIS GRAIN DEALERS' ASSOCIATION, ET AL.

Appearing in favor of the present rules of the commission in regard to Moisture Test, John M. Dennis, John F. Courcier, E. B. Merrill, Dr. W. S. Duvell, Harry Patton and E. H. Culver. Appearing against the continuance of the present rules of the commission in regard to Moisture Test, Lee G. Metcalf, Henry Holmes, S. W. Strong, W. L. Shellabarger and Mr. Newell.

Case heard July 25, 1911.

Findings of the commission entered Aug. 29, 1911, as follows:

This proceeding was begun by the filing of a petition by a number of grain dealers, receivers and shippers in the State of Illinois in which they say: "We do hereby request that the moisture test feature be eliminated at the earliest possible moment from the grain inspection rules of this State, we being satisfied after it having been in effect for about two years that it is impracticable and of no legitimate value to any, and that it works a great hardship on the producer and a large percentage of the shippers."

Rule No. 5 for grading of corn reads as follows: The following maximum limits shall govern all inspection and grading of corn:

Grade.	Percentage of moisture.	Percentage cob-	Percentage dirt • and broken grains.
		rotten exclusive of bin-burnt or mahogany corn.	
1	15	1	1
2	16	5	2
3	19	10	4
4	22	See No. 4 corn rule.	

All colors.

It will also be noted that No. 1 white corn is described as follows:

Shall be 99 per cent white, sweet and well matured.

No. 2 white corn shall be 98 per cent white and sweet.

No. 4 white corn shall be 98 per cent white and shall include damp, damaged or musty corn.

No. 3 yellow corn shall be 95 per cent yellow and sweet.

The moisture test for the grading of corn is a new method recently put in operation by the leading grain markets of the country and is rapidly being adopted throughout the entire country as the most scientific and only accurate way of determining the actual grade of corn. Without going into detail it is well understood that moisture is a controlling element in corn and especially in handling the first part of the crop early in the season, and without the moisture test as now used by this department there is no way to determine the amount of moisture in the grain. The moisture test like many other new methods has met more or less opposition, but the tendency of the times is to its approval. It is not strange and it is fair for us to state that there is a division of opinion among the grain men of Illinois upon the subject of the use of the moisture test, as well as the manner of its use, while the petition before us asks for the entire elimination of the moisture test the arguments made and evidence heard upon the hearing rather tended to the opinion that the commission should not entirely eliminate the moisture test but should insert in the rule the word "approximately," thereby leaving it in a large measure to the judgment of the grain inspector. Others contend that instead of being $19\frac{1}{4}$ per cent we should make it $19\frac{1}{2}$ per cent. This, it occurs to the commission, would be just as arbitrary when you reach the maximum percentage at $19\frac{1}{4}$ per cent as it is at $19\frac{1}{2}$ per cent. It will be noted from the rules above quoted that the word

"approximately" is not used in any other rule. No. 1 white corn shall be 99 per cent white; not approximately 99 per cent white. No. 3 yellow corn shall be 95 per cent yellow and sweet; not approximately. The commission has faith in the ability of a good inspector to determine in a large measure the quality of all kinds of grain, but it cannot be contended or maintained successfully that upon the question of moisture an inspector can determine as accurately as the machine test which the evidence shows conclusively is accurate when properly operated and that they are so simple that they can be properly operated.

The commission regard this matter of so much importance, and so many gentlemen thoroughly interested in the grain market have been before the commission and presented their views, that we deem it proper for the information of the public to go into detail somewhat in this finding and ascertain, if possible, the real sentiment and facts in relation to the matter; and to that end we deem it proper to quote liberally from the evidence and record in the case.

WE NOTE ROGERS GRAIN CO., OF CHICAGO SAY:

"After another winter trial we are more firmly convinced than ever that the application of the moisture test in the inspection of grain is impracticable."

STOTLER BROS., STRAWN, ILL., SAY:

"We are very glad to learn of the petition to the Railroad and Warehouse Commission and feel that corn should be handled on its merits, and not subject to the moisture test."

METCALF & KAINAHAN, LANESVILLE, ILL., SAY:

"We desire the moisture test removed in the inspection of corn in Illinois."

GILMORE BOYLES, GRIDLEY, ILL., SAYS:

"We wish to record our objection to the moisture test. We believe entirely too much emphasis is put upon the one factor, moisture."

CHARLES L. M'MASTERS, TUSCOLA, ILL., SAYS:

"I don't think that the moisture alone should govern the grading of corn."

These statements are a fair illustration of the statements made in a large number of letters filed with the commission addressed to H. W. Rodgers & Bros., of Chicago, in answer to letters written by them.

It is also true that in the arguments when a large number of gentlemen were present from all parts of the State that there was a great diversity of opinion on the subject.

In view of the importance of the matter and of the resolution adopted by the Grain Dealers' Association in relation to the matter the commission sent its reporter to their convention to take down for our in-

formation the debates and statements of all parties concerned in this important subject, and from the statements made in that convention we quote liberally for the reason that in that convention were the expert men among the grain dealers upon this subject and it was the one meeting to which we had a right to look for practical information and valuable suggestions.

At that convention Dr. J. W. T. Duvell, Crop Technologist, B. P. I. Department of Agriculture, Washington, D. C., spoke upon "The uses and advantages of the Moisture Test in Handling Corn."

It is conceded that Dr. Duvell is possibly the best authority on this subject test because of the great importance of that crop in Illinois, and most of the work of his bureau, he stated, has been devoted to the study of moisture in corn. He began his address with the following statement: "Moisture, the most important factor in the keeping quality of corn. A knowledge of the moisture content is therefore indispensable in its commercial movement. The moisture test therefore has come to stay, although it may have been abused in its use, for the time has come when the American consumer will buy only on the basis of the actual dry matter value and Europeans will soon do the same."

Dr. Duvell further stated:

"There is a natural shrinkage in the curing of corn from 22 per cent of moisture as it goes into the crib in the fall to 12 per cent when it comes out in the spring dry. The actual weight loss is greater than the indicated loss of moisture; and a study of this shrinkage is valuable commercially to both the farmer and the shipper. The discount in value, all things being normal in the market, with corn at about present prices, is say five-eighths cents per bushel for each 1 per cent excess of moisture down to 12 per cent; but the discount must vary in proportion to the price. There are also the conditions under which the grain must be handled by the receiver, when 21 per cent corn arrives, it must be dried to 16 or 17 per cent to carry, and the receiver must pay the cost and stand the shrinkage—all of which conditions affect the cash discounts from the basis price. There is a variation in the moisture content with the season and from year to year. The corn of 1909 was better than that of 1910. In October, 1909, the corn of Illinois examined by Dr. Duvell's laboratories, averaged 20.3 per cent moisture; in March, 1910, it was 18.9 per cent against 18.7 in February; in June 14.1 per cent and in August 12.7 per cent, the tests being made from corn taken in many points in Illinois. The crop of 1910 was indeed much worse than he had thought. Of 1,906 cars tested in New Orleans from 125 stations and twenty-four counties in the very heart of the corn belt of central Illinois, covering all Illinois shipments to New Orleans, the average moisture (all grades, 2, 3 and 4) was 20.4 per cent. This was the best corn Illinois had, so that when we consider that it had more than 20 per cent of moisture, it need hardly be said that there is something radically wrong. You know that 20 per cent corn is not a safe commercial article.

Now look at what this means. Last year (1910) the corn crop measured three billion bushels, of which Illinois grew 414 millions. Of the entire crop 22.2 per cent went out of the country where it was grown,

of which amount Illinois ships 48 per cent, or 199,104,000 bushels or 28 per cent of the entire movable corn of the Union. Illinois, therefore, has the call on rules governing the moisture problem. Now on account of its poor quality Europeans have stopped buying American corn when they can get corn elsewhere; and when that substitution becomes permanent, our surplus corn may stay at home. I think that today if Europe would buy freely in this country our price would be three cents a bushel higher than it is. So you are interested in these conditions and you can improve them if you want to. The corn for 1910 sold for early shipment, all had at least 5 per cent excess of moisture, equal to 9,955,000 bushels, 9,955 cars; and if this moisture went to New Orleans the freight alone would equal \$750,000.00."

At this same convention Mr. George H. Hubbard, of Pulaski, former president of the association, delivered an address on the same subject. Among other things he said: "Our company has three testers in use, two for three years, and one for two years, and our experience has been satisfactory. We think very much of these machines. There is one man responsible for uncured corn, the grower. I think it is your duty as grain dealers to urge upon him the necessity of planting a seed corn that he knows will mature in this latitude." It is evident from the record in this case, as presented by all sides of the question, that the growers of corn in Illinois have been growing a very large grained corn which contains a large amount of moisture, and it was suggested by many speakers that there was a great necessity of growing a different character of corn not containing so much moisture, and it was also stated that the best way to bring about results which would be both profitable to the grower, as well as the trade, was to discriminate against damp corn in the buying, and that suggests that this is a thought well worthy of consideration of every corn grower in Illinois in view of the record in this case and we commend it to their very thoughtful consideration. Mr. Hubbard further stated: "It seems to me to be able to determine the amount of moisture in corn is of inestimable value to the country grain dealers. It not only enables him to arrive at the value of it, but in addition it is there to tell you unmistakably of its carrying qualities, it also acts as a guide in determining the proper market to ship to. I am constrained to say that I believe the strongest objection to the moisture tester emanated from those buyers that do not own or use one in their own business.

Permit me to say that in my judgment the better thing to do is to cease complaining of the moisture tester and go immediately and buy one and use it and you will rejoice at your good fortune in having a moisture tester and you will wonder how you got along without one, or how it was possible that you had been so foolish as to oppose progress. We are sometimes met with the argument that you can get samples out of the same car that will show a difference in the test. We are ready to admit such a thing is possible, but it is just as true that there is a difference in the corn, that being true it proves the accuracy of the machine. Believing as I do what I have said about the moisture tester to be true,

it seems to me rather preposterous to assume to think of eliminating the moisture tester. It is here to stay. Its uses may be improved upon but to discard—never.”

In the further discussion of this same matter at the convention Mr. Wayne, of Delevan, favored the retention of the tester. Mr. Shellabarger, of Decatur, voiced the opposition to the tester. He dwelt upon its deficiencies, real and artificial, charging the last to the machine and emphasizing the former. He did not charge deliberate intent on the part of any one to misuse the tester, but in practice he insisted the inspection rule did act to the disadvantage of many shippers by representing corn otherwise sound and in every way desirable of the benefits of its good qualities, it has a technical excess of moisture which might not be real.

Mr. Cole favored the use of the moisture tester and said he had found it useful but he did not agree with the grade rule that excess of moisture as the sole defect of grain should be the factor in determining the grade. The good qualities, Mr. Cole thought, should be allowed to count.

Mr. Tyng said the elimination of the moisture test is to return to the old system of inspection by guess, to anarchy in the inspection system. If we do not retain this test we shall all be at the mercy of the inspectors.

The resolution then presented was voted upon and adopted by a vote of 42 for and 17 against. There were more than 200 people at the convention at this time and it will thus be seen that a large proportion of the persons present voted neither way upon this important subject.

We have called attention to this convention and its proceedings at some length for two purposes: first, to show that it is a very important subject that we have under consideration, and to show that there is a great diversity of opinion among men most interested in the subject. We have gone through this testimony and record very carefully and it seems to us that the weight of authority, everything considered, is in favor of maintaining the present rule as it now stands. It will be remembered that upon a former application, when the rule stood at 19, the commission was urged to vary it from $\frac{1}{4}$ per cent to $\frac{1}{2}$ per cent, and we added $\frac{1}{4}$ per cent to the rule. This is a matter not alone for Illinois, but for the entire country to determine. Illinois being the largest corn-raising State, is very much interested in having as many and as favorable markets for her corn as possible, and we have taken pains to ascertain the feeling of other states and markets upon this subject, and to that end a large number of markets throughout the United States were notified of the hearing before this commission upon this subject, and many letters were received by the commission and asked to be filed and made a part of the record, which was done, and from a portion of them we note as follows:

BAKER & HOLMES CO., JACKSONVILLE, FLA.:

“We think undoubtedly it would be a mistake to change the grading upon corn from the moisture test.” Gives illustration of loss by other method.

THE COLES COMPANY, MIDDLETOWN, CONN.:

"We desire to express disapproval of any attempt to eliminate moisture test as determining factor in grading corn, especially for the large number of distributors in New England who have no other recourse."

NIXON GROCERY CO., AUGUSTA, GA.:

"Do not think the inspector should be given any leeway in fixing the grade, but should fix it according to the moisture tests. Some corn that to the eye would grade two, when the moisture test is applied would not grade two. Same would spoil before reaching here."

JULIETT MILLING & CLOVER CO., MACON, GA.:

"A large proportion of the corn that comes into this section is intended for milling purposes and its value is absolutely contingent upon the amount of moisture therein.

"The possibility of corn heating is in proportion to the moisture it contains. Unless there is some assurance that a given grade of corn would contain a given per cent of moisture, it would be equivalent to no grade at all."

MURPHY & CO., AUGUSTA, GA.:

"In the grain business sixty years. Moisture test this year, the first protection we have ever had. Under the old test, often cars were opened, looked good, but would heat within forty-eight hours after unloaded."

THE GOEMAN GRAIN CO., TOLEDO, OHIO:

"We think it will be a mistake to eliminate this moisture test as part of the rules for grading."

THE COMMERCIAL EXCHANGE OF PHILADELPHIA, SAMUEL L. M'KNIGHT,
PRESIDENT:

"I believe that the moisture test is the only practical basis upon which to grade corn, especially in certain seasons of the year. It has recently come to my knowledge that European buyers have held conferences and have endeavored to bring about an alteration in their grain contracts by which they will buy only the moisture test from the United States.
* * * For this reason I would urge that this question of permitting a leeway to the inspector should not be sanctioned by the commission."

LAMB & HOLLINGSWORTH, AUGUSTA, GA.:

"The moisture test is of the most vital importance to grain dealers in this section of the country, particularly during the germinating season. The results of the moisture test have been most gratifying this year and we trust that your Honorable Body will insist upon the continuance of the moisture test."

GRAIN DEALERS NATIONAL ASSOCIATION, AUGUSTA, GA., W. L. HOLLINGS-
WORTH:

"Protest against any disturbance of the rules for grading as adopted by that association. In grain business for more than thirty years. Have had less trouble and loss this year than in any of the past years. Shippers knowing that they were equipped with moisture testers, were more careful. Sincerely trust that your Honorable Body will not permit any change."

JAMES D. KING, WEST CHESTER, PA.:

"Think it very important that moisture test be used; that the inspector should not be given any leeway in the matter, and that No. 2 corn be kept at 16 per cent."

WESTERN GRAIN CO., BIRMINGHAM, ALA.:

"To adopt a rule which permits the modification of the moisture test to suit varying conditions would be as reasonable as to say when the hay crop is of poor quality that No. 1 hay may be dark, badly cured or musty as to say No. 2 corn may contain 16 per cent of moisture and under other conditions 18 or 20 per cent. This would open the gateway for unfair business."

LYNCHBURG MILLING CO., LYNCHBURG, VA.:

"We believe that the granting of leeway in the grading of corn would restore to grain inspection business one of the greatest disabilities, which the grain trade has sought to eliminate, and we wish to protest. We have trouble with grain arriving hot even under the present conditions, and if such leeway was granted we believe we would have no end of trouble."

PENINSULAR NAVAL STORES CO., TAMPA, FLA.:

"The greater part of the moisture has to be taken out of the grain no matter what season of the year it is shipped into our climate before it will be safe to handle. We therefore enter protest against the elimination of the moisture test."

CHARLES ROCKWELL & CO., MT. VERNON, N. Y.:

"The matter of uniform grades is of vital importance and we trust that the rules now in force will not be changed, and that no leeway will be given the inspector which will have the effect of making the grading more elastic."

J. W. GWALTNEY & CO., NORFOLK, VA.:

"We are more concerned about the moisture contained in corn than in any other requirement, and we wish to protest against any ruling that would lower the grades in this respect."

BONEY & HARPER MILLING CO., WILMINGTON, N. C.:

"It is of the utmost importance to know the moisture corn contains when we buy it, both for the reason that we have to dry the goods we make to a certain point and if the corn contains more than 16 per cent moisture it is dangerous for us to handle it at all."

RICHARDSON BROS., PHILADELPHIA, PA.:

"We think it would be highly dangerous to grant any such authority, especially on corn, which is admitted by authorities to be a dangerous article to handle. We believe a scientific moisture test should be rigidly adhered to."

In view of the statements of Dr. Duvell, quoted herein, the following letters received by the commission we deem of great importance:

[COPY.]

LONDON CORN TRADE ASS'N,
EXCHANGE CHAMBERS,
28 ST. MARY AV.,
LONDON, E. C.

LONDON, E. C., 24 July, 1911.

DEAR SIR—I am directed to inform you that it has been decided by my Executive Committee that a new contract shall be drawn up early in November to be applicable to the new season's business for American corn, on the basis of a moisture content for No. 2 or sail grade of not more than 16 per cent at time of shipment, such moisture to be ascertained and certified by an analyst appointed by the United States Government from samples drawn previous to shipment.

Yours faithfully,

Assistant Secretary.

THE SECRETARY
CHICAGO BOARD OF TRADE,
CHICAGO, U. S. A.

[COPY.]

CHICAGO, ILL., Aug. 9, 1911.

Hon. Orville F. Berry, Chairman, Board of Railroad and Warehouse Commissioners, Carthage, Ill.:

DEAR SIR—We beg to enclose herewith a copy of the communication just received from the London Corn Trade Assn., advising me that the Executive Committee of the Association has decided that a new contract shall be drawn up early in November to be applicable to the new season's business for American corn on the basis of a moisture test for No. 2 or sail grade, of not more than 16 per cent, at time of shipment, such moisture to be ascertained and certified to by an analyst appointed by the United States Government from samples drawn previous to shipment.

We merely place a copy of this letter in your hands for your information, and remain,

Very respectfully,

[Signed] GEORGE F. STONE, SEC'Y,
Board of Trade of the City of Chicago.

Another matter worthy of consideration is, the present uniform moisture test being adopted throughout the country has been incorporated into text books of all agricultural colleges throughout the country and is being made a special study, and it is desired by these colleges that it be kept as near uniform as it is possible.

All these facts, while not directly or possibly immediately connected with the question before the commission, are worthy of consideration and have been considered by the commission in reaching its conclusion.

In support of the petition it is claimed:

1. That the moisture test should not be the determining factor in fixing the grade of corn:

a. Because the mechanical appliances now in use for determining the moisture content are not sufficiently accurate, and admit of too much variation to constitute them dependable devices for so important a purpose.

b. Because the intrinsic value of corn containing more than 19¼ per cent of moisture might entitle it to a higher sale price than would accrue to other corn of less moisture content but carrying other disabilities.

2. That the moisture test affords a means by which a parcel of corn containing 1/10 of 1 per cent of moisture in excess of the maximum of the grade contracted, may be applied on contract at an unreasonable and unjust discount.

THE DETERMINING FACTOR.

Let us look into the wording of the complaint wherein it is held primarily that the moisture test should not be the determining factor. If the moisture test is to be retained as a factor of any degree, an analysis of the phraseology of the rule must disclose that degree, either by the indefinite article "A" or by the definite article "the." If in the phraseology of the rule no other requirement be found than that the corn to be graded shall contain no more than 19¼ per cent of moisture, the definite article "the" is placed on the interpretation of the rule and the moisture test is declared to be the sole determining factor.

If, however, a reading of the rule discloses specifications other than that of the moisture test, the indefinite article "A" at once goes into the interpretation and the moisture test takes its place as a determining factor, to become the determining factor whenever its volume shall have exceeded its prescribed maximum. To illustrate: To receive the grade of No. 3 white corn shall be—

1. Ninety-eight per cent white.
2. Shall be sweet.
3. Shall contain not more than 19¼ per cent of moisture.
4. Shall contain not more than 10 per cent of cob-rotten, exclusive of bin-burnt or mahogany corn, and

5. Shall contain not more than 4 per cent of dirt and broken grains.

Here we find eight determining factors, of which six by exceeding their prescribed maximums, and two, by existing at all, may become the determining factor in fixing the grade.

MECHANICAL APPLIANCES.

By comparative tests and experiments aggregating thousands, conducted by our Inspection Department, by all the principal terminal markets and by the United States Department of Agriculture in numerous laboratories located in all parts of the country east of the Rocky Mountains, it is shown, by evidence remarkable for its unison, that the moisture-testing machines now available, will, when properly handled, give perfect and unvarying results, and that a high degree of proficiency can readily be attained by operators of ordinary intelligence.

INTRINSIC VALUE.

It cannot be denied that well matured, sound, sweet and perfectly clean corn containing $19\frac{1}{4}$ per cent of moisture is of higher intrinsic value than well matured and sweet corn containing only 19 per cent of moisture but carrying 15 per cent of unsound corn and 1 per cent of dirt. The comparison might be carried still further to discredit the rule by proving the wide difference between the intrinsic value of well matured, sound, sweet and perfectly clean corn containing $19\frac{1}{4}$ per cent of moisture and corn containing 10 per cent of cob-rotten, 4 per cent of dirt and broken grains, both being given the grade of No. 3; even then it would be no argument against the established moisture maximum of $19\frac{1}{4}$ per cent. In every average crop of corn there is a certain percentage each of several qualities. Running through a period of years, tests, experiments and comparisons have developed a classification of uses to which these several qualities may be put. In order that any one of the classified users may designate his choice of qualities all requirements have been fitted to natural conditions and distributed into grades with maximums and minimums definitely fixed so that buyers and sellers may make their contracts with the assurance that in their fulfillment they may not be subject to manipulation nor to the caprices of individuals. After selecting from a crop of corn that part which is perfect to be graded No. 1, the process of selection continues until all of that quality acceptable to the second class of users, more generally than the first, has been given the grade of No. 2. With the two higher grades determined, our attention is directed to that more intermediate quality which comprises the great bulk of the crop, and here the requirements become general.

In defining the maximums and minimums of this grade, we must ascertain the number and kinds of uses to which this quality which has been denied admission into the next higher grade, can be put. All other specifications being agreed upon, we come to the moisture content. We begin adding moisture and continue until the question is raised as to keeping qualities both for storage and for shipment. Resultant tests

show that corn of moisture content in excess of $19\frac{1}{4}$ per cent is positively unsafe for storage and shipment, even in climates most favorable to it. The maximum in the uniform rules is accordingly fixed at 19 per cent and this great commercial quality is given the grade of No. 3. It is therefore clear that to raise the maximum moisture content of the grade, would be to disqualify it as the bases upon which to predicate purchases and sales for the movement of the one hundred millions bushels of surplus in the State of Illinois alone. Thus, we see that, regardless of what the other qualities of a parcel of corn may be, any comparison offered to discredit the existing rule will suggest that instead of disqualifying the grade of No. 3 as the commercial grade by raising the moisture maximum of $19\frac{1}{4}$ per cent, the inconsistencies of the rule might be corrected by beginning at the minimum of the grade of No. 2. As to the other qualifications than moisture, namely, 5 per cent cob-rotten and 2 per cent dirt and broken grains, and decreasing the maximum moisture content in the same proportion as the percentage of cob-rotten and dirt and broken grains increase.

DISCOUNTS.

The principal cause of complaint, we believe resolves itself into one of discounts. This cause is as old as the custom of barter itself and will continue to be so just as long as men will insist upon selling something they do not own, and before its qualities can be determined. Buyers of corn, like buyers of anything else, naturally seek the best line of resistance, and the fewer the hazards he is required to assume, the more he will pay for the privilege of trading. If the seller, at any time prior to delivery, elects to take his chances with the numerous conditions which may affect the quality of corn, and thereby obtain a price in proportion thereto, he cannot reasonably expect the firm rule upon which his original agreement was based, suddenly to become elastic so that by approximation, the burden of the disability he has brought upon himself may be shifted to the shoulders of a disinterested and impartial inspection department.

It is claimed that in former years when the fixing of grades was left to what the eye could see, the nose could smell, and tongue could taste, the hand could feel and the scales would register, there was not so much trouble over discounts. It is further held that since the adoption of the moisture test a parcel of corn showing a moisture content of $\frac{1}{10}$ of 1 per cent in excess of the maximum of the rule, has been discounted, 2, 3 and 4 cents a bushel, a thing which could not be done, if by writing the word approximately into the rule, the inspector be given authority to exercise his judgment and probably to certify the parcel as No. 3. The truth seems to be that in the days before the advent of practical moisture testing machines, the same parcel of corn would have contained the same amount of moisture and would have been subjected to identically the same discount according to the supply and demand just as it is today, but the seller had no way of knowing that that particular parcel thus graded and discounted, contained only $\frac{1}{10}$ of 1 per cent more moisture than a companion parcel which had been given the next higher grade.

Again if the request were granted, and the word approximately should be written into the rule, it is clear that the change would not cure the ills complained of. To define and limit the meaning of the word would be again to fix a definite maximum; and not to prescribe its limitations would be to invest the inspector with unbridled latitude and destroy the grade as a factor in making contracts.

OFF GRADE.

The discounting of "off-grade" grain is a matter that for years has been the cause of more dissatisfaction to the shippers of grain to primary and terminal markets than almost any other feature of the grain business. These unsatisfactory conditions are bound to continue as long as the discounting is carried on entirely without system or supervision by exchange authorities.

The New York Produce Exchange realizing that a more intelligent method was needed, a system was devised and put in operation a little more than three years ago that at once appealed to shippers as being so eminently fair that friction has been reduced to a minimum, if not altogether eliminated.

The committee on grain is empowered to appoint three "settlement committees" one each for wheat, corn and oats; and it is provided that on each of these committees there shall be a member of the grain committee who gives to such sub-committees an official standing. It is the duty of the several committees to meet at a certain hour each day, generally at the close of the market to receive all samples of "off-grade" intended to be applied on contracts and arrange the discounts.

The method of arriving at such differences is to determine what is a fair average price for the "off-grade" to be applied from sales of it in the open market on that day; and this is then compared with the average price obtained for the contract grade in question, with the result that an equitable discount is established. Some such method as this if adopted, we believe would prove satisfactory here and remove much complaint now charged to the moisture test.

In either case the same objection will arise every time the inspector discriminates against the 1/10 of 1 per cent until the maximum shall have been raised to a point where it will comprehend the highest percentage of moisture nature can put into corn. In view of all those facts and as we believe in the interest of the corn grower, as well as the shipper and consumer, the commission denies the prayer of the petition to eliminate the moisture test or change the rule.

By order of the commission, Aug. 29, 1911.

O. F. BERRY, *Chairman*;

B. A. ECKHART, *Commissioner*;

J. A. WILLOUGHBY, *Commissioner*.

WAREHOUSE RECEIPTS.

It has been brought to the notice of the commission that frequently grain elevator owners or lessees often deliver warehouse receipts to the owner before registration, expecting him to have the same registered. Warehouse receipts should not go into circulation until they are registered in the registrar's office of this department.

It is therefore ordered by the commission that all elevator owners, lessees, and persons issuing warehouse receipts shall stamp upon each receipt when issued in bold letters the following: "This receipt is not negotiable unless registered with the registrar of the Illinois Grain Department of the Railroad and Warehouse Commission." And all such owners and lessees are hereby directed to stamp the words above named on each certificate before delivering the same.

By order of the commission, this 11th day of August, 1911.

O. F. BERRY, *Chairman.*

WAREHOUSE RECEIPTS.

The registrar of the Illinois Grain Department brought to the notice of the commission that the order issued by the commission on Aug. 11, 1911, in relation to endorsements upon warehouse receipts, contained the following language:

"This receipt is not negotiable unless registered with the registrar of the Illinois Grain Department of the Railroad and Warehouse Commission."

The registrar stated that there were objections made by some of the warehouse men to this language, stating that it made it difficult for them to comply with the order, and, after full consideration by the commission, it modified by striking out the words above quoted and insert in lieu thereof the following:

"This receipt should be reported and registered with the registrar of the Illinois Grain Department of the Railroad and Warehouse Commission within twenty-four hours after its issue."

It is further ordered that all owners and lessees stamp these words above named on each certificate before delivering the same.

By order of the commission this 7th day of September, 1911, dated at Chicago, Ill.

O. F. BERRY, *Chairman.*

APPLICATION FOR CANCELLATION OF LICENSE ISSUED MAY 10, 1911, TO
CENTRAL ELEVATOR COMPANY COVERING CALUMET ELEVATOR "B."

Now on this day comes the Central Elevator Company of the city of Chicago, Ill., and presents to the commission, license issued by this commission May 10, 1911, to Central Elevator Company covering Calumet Elevator "B" as a public grain warehouse, and asks to sur-

render said license and be released on their bond of \$20,000.00, given at the time of the issue of said license, and notifying the commission that hereafter this elevator will be operated as a private and not as a public warehouse.

Accompanying said petition and license, is a letter from Mr. M. A. Mueller, registrar of the grain department of the city of Chicago, stating that, "All outstanding receipts for grain in Calumet "B" elevator as shown on our records have been cancelled this day."

The commission being fully advised in the premises and it appearing that said license is no longer necessary, that the said Central Elevator Company has redeemed all certificates issued by it.

"It is therefore ordered, adjudged and decreed that the said commission accept said license and cancel the same as of the date of November 22, 1911, and the said Central Elevator Company is not permitted after this date to operate Calumet Elevator "B" as a public warehouse.

By order of the commission this 22d day of November, 1911, dated at Springfield, Ill.

O. F. BERRY, *Chairman.*

IN THE MATTER OF THE APPLICATION OF J. ROSENBAUM OF THE CITY OF CHICAGO, COUNTY OF COOK AND STATE OF ILLINOIS FOR LICENSE TO OPERATE AS A WAREHOUSEMAN A PUBLIC ELEVATOR OF CLASS "A" KNOWN AS J. ROSENBAUM ELEVATOR "B" SITUATED IN SOUTH CHICAGO, COUNTY OF COOK AND STATE OF ILLINOIS.

Now on this day comes J. Rosenbaum of the city of Chicago and county of Cook in the State of Illinois and files herein his application with this commission for a license to operate as a warehouseman a public elevator known as J. Rosenbaum Elevator "B," located in the city of South Chicago on the Calumet river between 102d and 103d sts. (formerly known as Peavy "B") in said city of South Chicago, county of Cook and State of Illinois. That said elevator has a capacity of 1,350,000 bushels of grain and files with such application a bond in the penal sum of thirty thousand (\$30,000.00) dollars payable to the people of the State of Illinois for the faithful performance of his duties and the operating of said warehouse according to the laws of the State of Illinois, and the rules and regulations of the Railroad and Warehouse Commission of the State of Illinois; and said commission having examined such application and the bond accompanying the same, the said application is hereby granted on the terms and conditions hereinafter stated, and the said bond approved and ordered received and filed by the secretary of this commission.

It is further ordered that prior to the issuing of this license by this commission, that the said J. Rosenbaum be required to put said buildings in order in every particular, to the satisfaction of the chief grain inspector of the Grain Inspection Department of the State of Illinois and that when so approved by the chief grain inspector, that said license hereby issued be delivered to said J. Rosenbaum.

It is further ordered that said J. Rosenbaum shall keep said elevator in proper condition in every particular as required by law and the rules and regulations of this commission and to the satisfaction of the chief grain inspector as aforesaid.

By order of the commission this 15th day of August, 1911.

O. F. BERRY, *Chairman*.

IN THE MATTER OF THE APPLICATION OF THE ARMOUR GRAIN COMPANY FOR A LICENSE TO TRANSACT BUSINESS OF A PUBLIC WAREHOUSEMAN OF CLASS "A" IN ARMOUR ELEVATOR COMPRISING HOUSES "A," "B" AND "B ANNEX" IN THE CITY OF CHICAGO, STATE OF ILLINOIS.

On November 9, 1908, upon the written application of the Armour Grain Company, as above stated, and upon due consideration of this commission, an order was issued on that date authorizing a license to be issued to the said Armour Grain Company upon its giving a bond in the penal sum of seventy-five thousand dollars (\$75,000.00) with good and sufficient surety, to be approved by the commission, conditioned for the faithful performance by the said Armour Grain Company as its duty as a public warehouse of Class "A" and its full compliance with all the laws of the State of Illinois in relation thereto. And said Armour Grain Company up to this time has not filed any such bond for the reason that it did not desire to operate such warehouse under a license. But now upon this 15th day of June, 1911, makes re-newed application for a license to use under the laws of this State and so conduct such warehouse as hereinbefore stated.

The commission being fully advised in the premises, it is hereby ordered that the order of November 9, 1908, be, and the same is hereby, re-affirmed and the secretary of this commission authorized to issue a license to said Armour Grain Company upon the filing of such bond required by such order.

It is further ordered that the said Armour Grain Company at the same time of filing said bond shall file with this commission a written guarantee to fully protect the holders of all certificates of every kind and character issued by said warehouse prior to the date of filing of said bond and the issuing of said license.

By order of the commission this 19th day of June, A. D. 1911.

O. F. BERRY, *Chairman*.

RECEIVERS' ASSOCIATION OF THE CHICAGO BOARD OF TRADE EX PARTE.

Protest against rules of the Grain Inspection Department of Chicago, in the matter of moisture content of corn before grading, and request that the Inspection Department determine the moisture content of each

car of corn inspected before establishing the grade, and also to apply the same standards on re-inspection as are used in the original inspection, filed Feb. 21, 1912.

On March 7, 1912, representatives of the Receivers' Association appeared before the commission and after a full hearing, the commission agreed that the demand was a just and proper one, and it was directed by the commission that hereafter all cars of corn that the Receivers' Association or any buyer desired tested, should be tested by the Inspection Department, and that no charge be made for such moisture test. Case stricken.

INTRODUCTION.

The following index refers to the various matters discussed in the cases. References are to pages upon which begin the cases containing the subject referred to by the index. When seeking a subject in the index, look first for your particular subject. If not found under that heading, look to some common heading or to some other particular heading where the subject might be found. The matters are cross-referenced in such a way that it is believed no difficulty will be found in finding what is sought if it is covered in the decisions.

In addition to decisions of the commission, this book contains three Supreme Court decisions, which, because of their importance, have been included and indexed along with the other decisions in the book. They are: *Ill. C. R. R. v. St. L. & N. E. R. R.*, p. 129, upon the power of the commission as to location of crossings, etc., under the Act of 1889; *Chi. & Southern Traction Co. v. I. C. Ry. Co.*, p. 203, regarding crossings in cities and villages and upon the constitutionality of the Act of July 1, 1889; *People v. St. L., A. & Terre Haute Ry.*, p. 433, pertaining to train service.

A decision often referred to in the index, but for lack of space not reported, is that of *The People v. C., I. & L. Ry. Co.*, 223 Ill., 581, in which it was held that all railroads doing business in this State, without reference to the state from which they derive their charters and wholly regardless of whether they are engaged in interstate or intrastate commerce, must report to the Railroad and Warehouse Commission as required by law; and if they fail to do so, can be compelled to perform such duty by mandamus.

ERRATA.

Another decision worth examining is that of *C., B. & Q. R. R. Co. v. Jones*, 149 Ill., 361, explaining the Act of 1873 relating to extortion and also showing the extent of the power of the Railroad and Warehouse Commission to fix rates and the value of such schedules as evidence.

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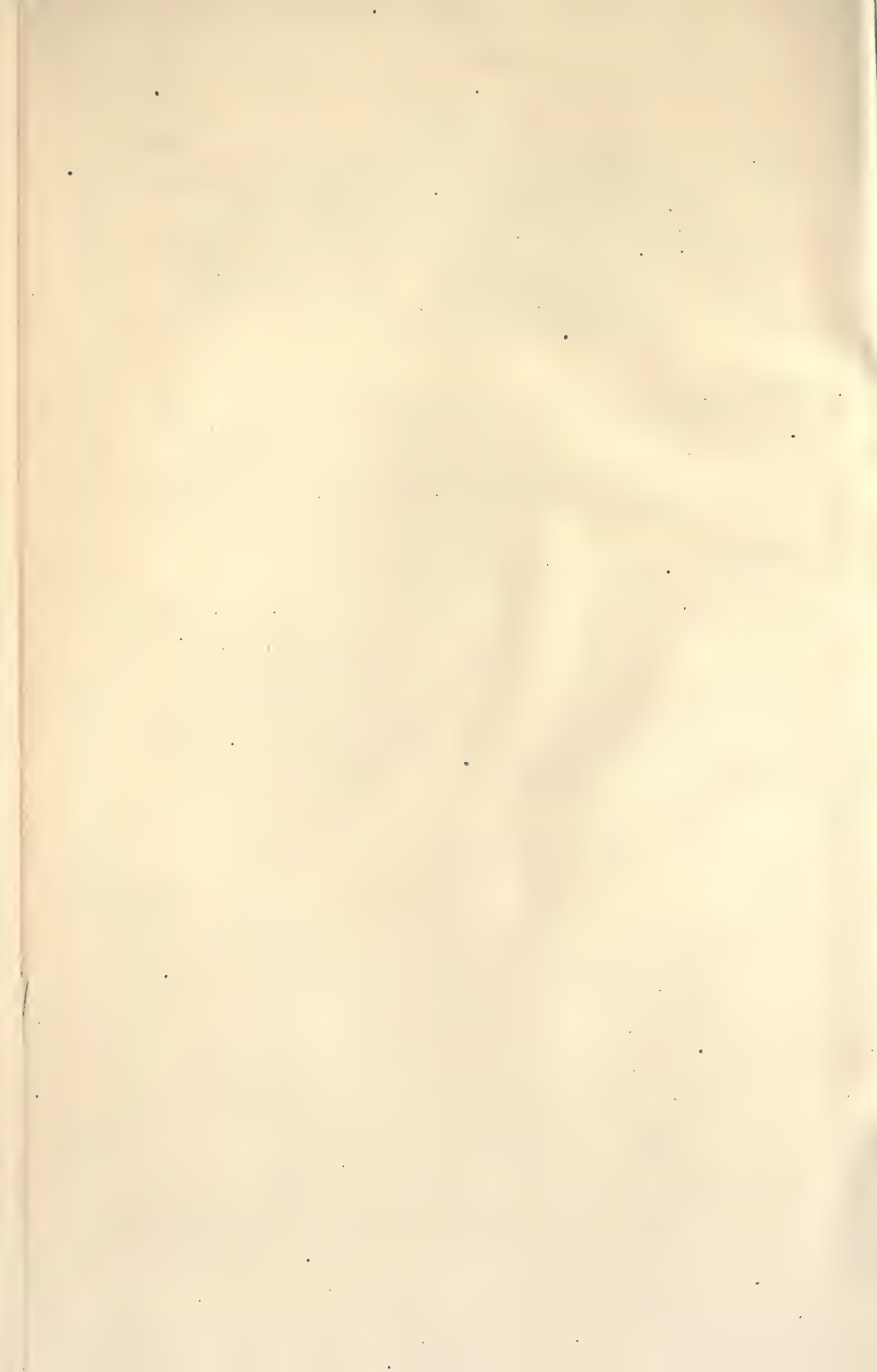
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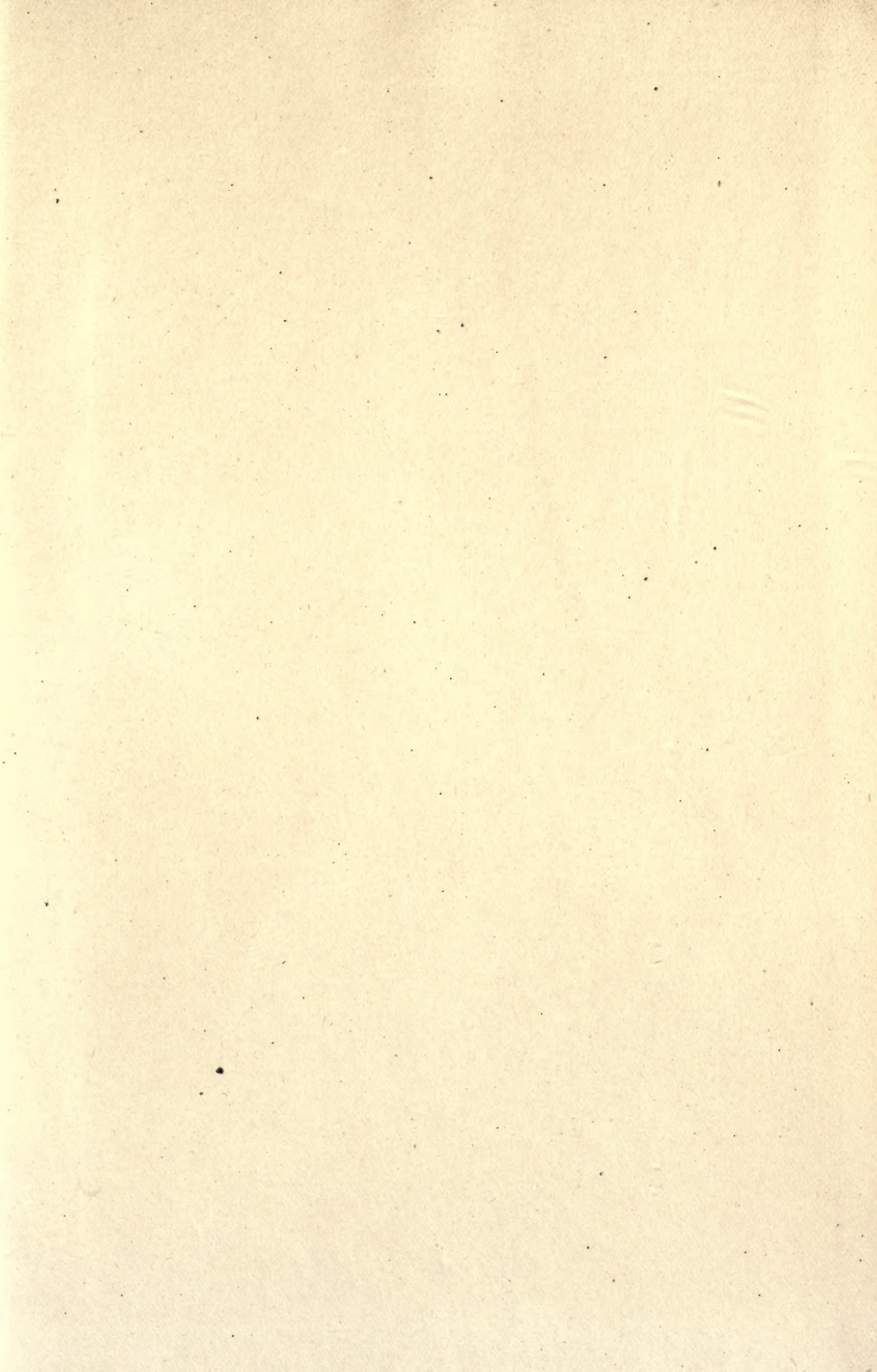
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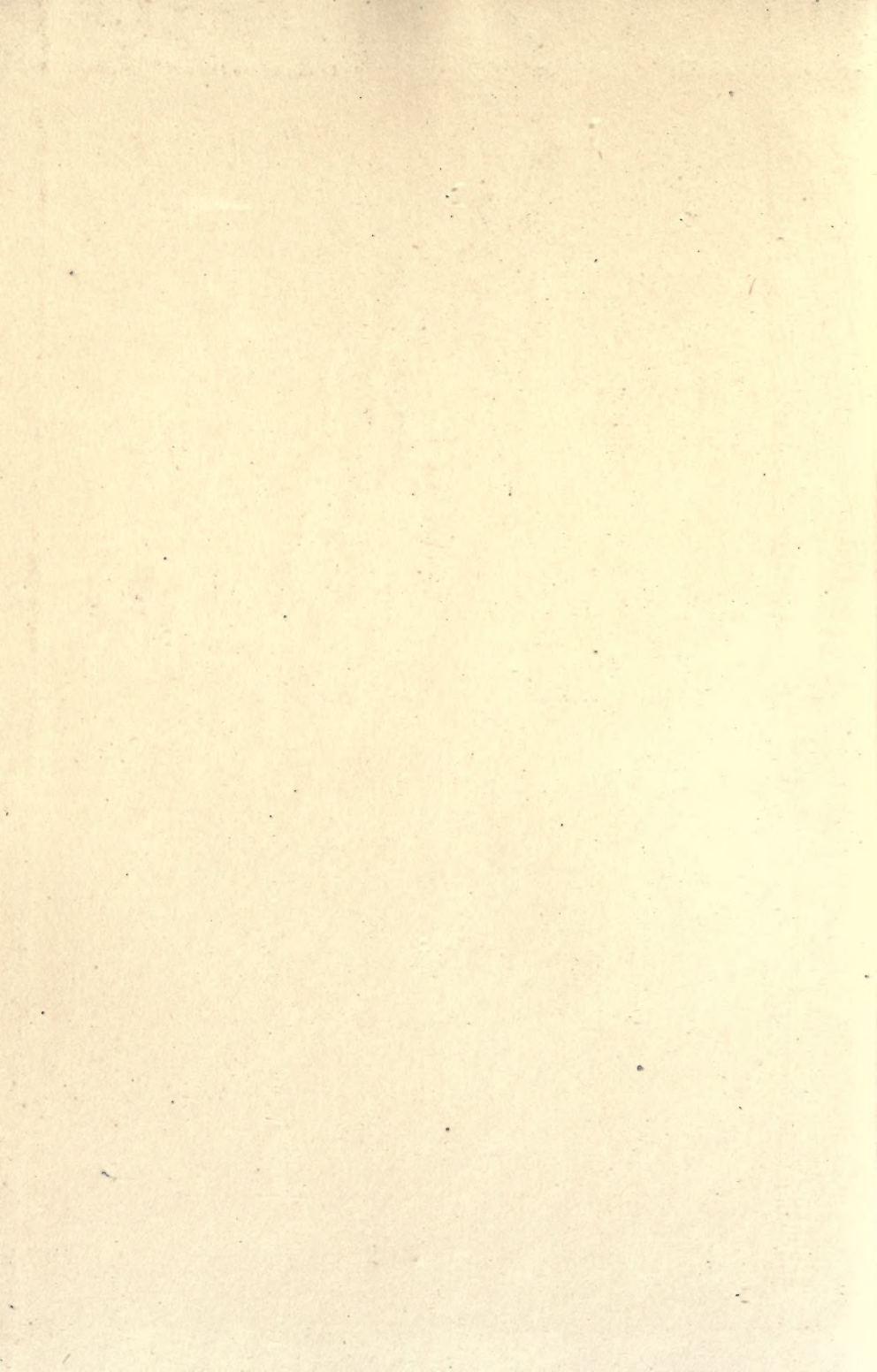
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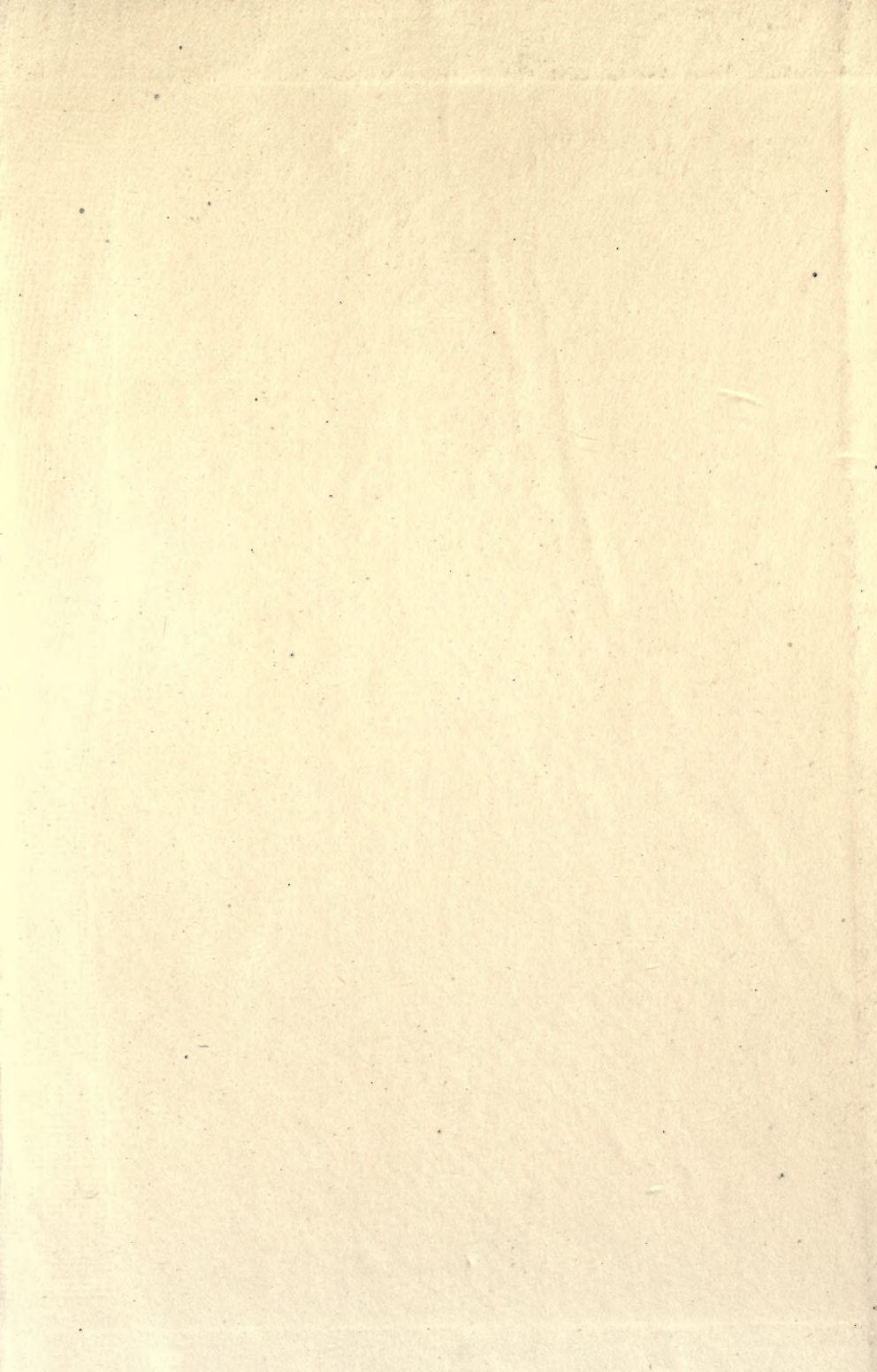
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